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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 S. PATRICK MENDEL,,
9 Plaintiff,

10 vs.

11
12 **ELAINE CHAO**, in her official capacity
13 as **U. S. Secretary of Transportation**;;

14
15 **XAVIER BECERRA**, in his official
16 capacity as Attorney General of the State
17 of California;

18
19 **RAYMOND MARTINEZ**, in his
20 official capacity as **Administrator**,
21 Federal Motor Carrier Safety
22 Administration,

23 **LORETTA BITNER**, in her official
24 capacity as **Chief, Office of**
25 **Enforcement and Compliance**, Federal
26 Motor Carrier Safety Administration,
27
28

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CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

CV NO. 19 3244

VERIFIED COMPLAINT:

HEARING DATE: TBD
TIME: TBD
DEPT. COURTROOM TBD
JUDGE: TBD

Administrative Procedures Act, 5 U.S.
Code § 702-706 Right of Review
(Federal officials);

Deprivation of Rights (42 U.S.C.
§§1983, 1988)(State Officials);

Sherman Antitrust Act - Violations of
15 U.S.C. §§1 and 2; (15 U.S.C. §§4 and
15) and Clayton Act;

**Private Enforcement of Federal
Transportation Law** (Title 49, U.S.C.
§14704) Failure to comply with 49
U.S.C. §§13904(d), 13404(f), 14102,
14303, 14501(b), 14501(d);

COMPLAINT- 1

MICHAEL PICKER, in his individual and official capacity as **President, Commissioner**, California Public Utilities Commission,

CARLA J. PETERMAN, in her individual and Official Capacity as **Commissioner**, California Public Utilities Commission,;

LIANE M RANDOLPH, in her individual and official capacity as **Commissioner**, California Public Utilities Commission,

CLIFFORD RECHTSCHFFEN, in his individual and official capacity as **Commissioner**, California Public Utilities Commission,

MARTHA GUZMAN ACEVES, in her individual and official capacity as **Commissioner**, California Public Utilities Comm.,

MARITZA PEREZ, in her individual AND official capacity as **Section Supervisor** Badge #11, Transportation License Section, California Public Utilities Commission ;

Private Enforcement of Federal Registration Requirements (Title 49 U.S.C. §14707) 49 U.S.C. §§13901-13902, 13904(d), 13904(f) and 49 U.S.C. §31138;

STATE LAW CLAIMS

California Unfair Practices Act; (California Bus. and Prof. Code §§17043-17044);

Unfair Competition Law (UCL) (Business and Professions Code §§17200 et seq.);

Unlawful Deductions From Wages (Labor Code §221 and IWC Wage Order No. 9);

Reimbursement of Business Expenses (Labor Code §2802);

Minimum Wage (Labor Code §§ 1182.11, 1194, et seq. IWC Wage Order No. 9, Minimum Wage Order);

Overtime Wages (Labor Code §510)

California Public Utilities Commission DOES 1-20 in their individual and official capacity as employees, agents, officers acting in concert with or for the California Public Utilities Commissioner Defendants;

UBER TECHNOLOGIES, INC., RAISER-CA, LLC; UBER USA, LLC; and

TRAVIS KALANICK, Board Member, former CEO; and GARRETT CAMP, Board Member and Founder; and

RYAN GRAVES, Board Member, former CEO; and

UBER DOES 1-300, Officers, Directors, Employees, Agents acting in concert with Uber Technologies, Inc. and its subsidiaries RAISER-CA, LLC and UBER USA, LLC;

LYFT, Inc. ; and

LOGAN GREEN, CEO of Lyft, and Board Member; and

JOHN ZIMMER, President of Lyft and Board Member; and

TORT LAW - UBER-LYFT
BREACH OF CONTRACT;

QUANTUM MERUIT;

CONSTRUCTIVE FRAUD;

NEGLIGENT
MISREPRESENTATION;

CONVERSION;

ATTORNEY MALPRACTICE

BREACH OF FIDUCIARY DUTY

DEMAND FOR JURY TRIAL

LYFT DOES 1-50 Officers, Directors,
Employees, Agents of LYFT Inc., acting
in concert with Lyft, Inc.; and

LICHTEN & LISS-RIORDAN P.C, a
law firm; and

SHANNON LISS-RIORDAN, Attorney
of the law firm Lichten & Liss-Riordan,
P.C.; and

ADELAIDE PAGANO, Attorney of the
law firm Lichten & Liss-Riordan, P.C ;
and

ANNE KRAMER, Attorney of the law
firm Lichten & Liss-Riordan, P.C.
Defendant

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PRELIMINARY STATEMENT

Nature of the Suit

Plaintiff S. Patrick Mendel brings this complaint to stop senseless acts of violence – the murder, rape, assaults - and theft of private property, perpetrated on Plaintiff, and other innocent drivers and passengers.

It has been illegal to provide passenger transportation to private motor vehicles for compensation, *rideshare*, under federal law since 1942.

The exemption for “share-expense” passenger transportation was removed to prevent the abandonment and injury to traveling passengers. The entire purpose of Congress was to prohibit “brokers” [Uber and Lyft] from conducting unlicensed travel bureau business with private vehicles rather than with State - Federal authorized motor carriers, California v. Zook, 336 U.S. 725 (1949).

California, the first to create a “TNC” permit, knew or should have known what they were creating would result in an opportunity for mayhem upon the public. They never even consulted with federal authorities, apparently California’s constant attempts to act as if it is not part of the United States is more important than the safety of the traveling public. California was not always irresponsible. California v. Thompson, 313 U.S. 109 (1941).

1 If not for the improper conduct of the Defendant government officials, and
2 Attorney malpractice, Defendants Uber and Lyft would never have been able to
3 start, much less advance across the country, a federally prohibited and illegal
4 passenger transportation enterprise propelling preventable carnage across America.
5

6
7 Defendant Uber and Lyft nationally run an illegal *interstate* passenger
8 *broker* and *motor carrier* transportation enterprise which uses and abuses computer
9 technology to avoid and violate federal transportation laws, destroying the safe,
10 efficient, competitive goals of the national transportation scheme and its policies.
11

12
13 Uber and Lyft violate and disable the purpose of federal transportation laws
14 to enable enough criminal misconduct to render the historical reputations of
15 history's greatest monopolists, gangsters, con artists, swindlers and human
16 smugglers, such as J. P. Morgan, Al Capone, Charles Ponzi, Bernie Madoff and
17 professional Coyotes into the ranks of obscure inept amateurs.
18

19
20 Plaintiff, (like other drivers), was deceived into contracting with Uber and
21 Lyft because of their misrepresentations of authority to legally conduct a for-profit
22 passenger transportation business.
23

24 The Defendant government officials bolstered Uber and Lyft's deceit, by
25 their ostensible authorization of Uber and Lyft's authority to contract with Plaintiff
26 to conduct regulated *interstate* and *intrastate* passenger transportation.
27

1 The Defendant federal officials sat on the sidelines, ignoring and abandoning
2 their obligation to carry out their primary statutory, administrative, regulation and
3 enforcement obligations, insuring the safety of the American people; rather their
4 improper inaction added credibility to Uber and Lyft's illegal¹ business.
5

6
7 The Defendant California State officials actively ignored and purposely
8 violated their obligations to conform their official conduct to California's
9 agreements with the federal government, by enacting incompatible State
10 transportation laws and rules contrary to federal transportation registration laws
11 and regulations as required.
12
13

14 Plaintiff was assaulted by passengers, deprived of a legitimate competitive
15 market place, cheated and deceived out of his labor and property, deprived of his
16 fundamental rights and finally driven out of his own legal livery business.
17
18
19
20

21 ¹ Black's Law Dictionary defines "unlawful" as not authorized by law, and it defines
22 "illegal" as forbidden by law.

23 Plaintiff uses these terms, as so defined, throughout this document under those definitions
24 to describe factual conduct of a defendant actor, not as a "legal conclusion."

25 Example: the law requires particular form of action or behavior and the actor does not
26 comply, the conduct is described as "unlawful" or non-compliant conduct related to the law; - the
27 law forbids particular conduct and the actor does what the law forbids, this conduct Plaintiff
28 describes as illegal because the law forbids the conduct. These are not legal conclusions to be
ignored, but proper descriptions of conduct in relation to laws and regulations.

The complaint subject matter concerns highly regulated transportation and business laws.
The final determination as to whether the alleged unlawful or illegal actions, (1) did or did not
occur (2) caused harm (3) and entitle Plaintiff to relief are judicial and jury decisions.

1 This occurred because the Defendant federal officials did nothing to insure
2 compliance by California's of its Agreement to continue to receive MCSAP grant
3 funds.
4

5 This was followed by the California Commissioners' abusing their authority.
6 They fashioned an illegal TNC Permit, improperly lobbied for by Uber and Lyft,
7 who were then allowed to operate a federally illegal passenger broker
8 transportation business. Defendants Uber and Lyft added to their illegal business
9 with prohibited predatory *maximum* pricing fixing contracts with their independent
10 contractor driver tradesmen violating the purpose of the antitrust laws for the free
11 play of prices by market forces.
12
13
14

15 By written contract, Uber and Lyft with dominant market position restrained
16 the competitive market and plundered Plaintiff's labor, property and customers,
17 When combined with the Defendant Commissioners', who through their agents
18 illegally demanded Plaintiff's money and private papers, unlawfully suspended and
19 revoking his TCP Permit, destroyed his ability to legally earn a living and his
20 business.
21
22
23

24 It is the failure of the Defendant Government Officials to lawfully carry out
25 their primary official duties, which enabled Defendants' Uber and Lyft's disruptive
26 law breaking to occur and continue to occur.
27
28

1 The Defendant Government Officials failed to carry out their primary
2 official duties, in a lawful manner, even after confronted with Uber and Lyft's
3 misconduct. The result is Uber and Lyft were and are allowed to illegally *disrupt*
4 the federally regulated passenger transportation environment, attracting and
5 inviting unscrupulous individuals, both drivers and passengers, who murdered,
6 raped and assaulted innocent passengers and drivers, including Plaintiff.
7

8
9
10 Some drivers were driven, by Uber and Lyft's misconduct, to such financial
11 desperation; they committed suicide.
12

13 In a final victory, Uber, Lyft, and their insiders, including former
14 government officials, who failed to arrest the misconduct, sold stock to the public
15 for enormous gains for an illegal, unprofitable business enterprise that literally
16 enables criminal murder, rape while they continue looting the Plaintiff (and other
17 drivers') of their labor and property.
18

19
20 All this carnage because the government officials failed to carry out the
21 federal regulatory transportation scheme, designed to prevent, this very same
22 conduct, which previously occurred in California and the rest of the nation from
23 1935 through 1942, when the Interstate Commerce Commission, originally
24 withdrew the exemption for "Rideshare," to prevent the aforementioned carnage.
25
26
27
28

Plaintiff alleges Defendants' did and are responsible for the conduct/misconduct against him and resulting injuries, including but not limited to violations of transportation, labor and antitrust laws, Plaintiff's Constitutional and statutory rights, and Plaintiff seeks multiple forms of equitable and legal relief and damages, as explained herein.

I. INTRODUCTION – A Warning Upfront:

1. This stuff gets confusing; sometimes Uber and Lyft, and their hired guns, intentionally want to muddle the distinctions between workers and contractors, per se antitrust violations, and who the consumer is, and twisting transportation regulation distinctions. This is very important in the legal realm but rarely of interest to ordinary people.

But understanding all this is a key to grasping Uber and Lyft's *disruption* and the nature of their illegal conduct in the internet age, computer engineers' proficient in game theory, algorithms, financial modeling and how the government lags woefully behind.

Disruption means UBER AND LYFT Violate THE LAW!

2. The following is a partial list of federal and State laws and regulations that are being violated by the defendants:
 - The Supremacy Clause of the United States Constitution
 - The dormant Commerce Clause of the United States Constitution

- 1 • 49 CFR §350.201 States Agreed to act Compatible, and Comply
- 2 and Enforce Federal Transportation Laws
- 3 • 49 CFR §372.101 Arranging, selling passenger transportation to
- 4 private vehicles for compensation prohibited
- 5 • 49 CFR Part 376 Lease of Vehicles - Requirements
- 6 • 49 CFR Subpart B Motor Carriers of Passengers Insurance
- 7 • 49 CFR §392.9a Operating authority required
- 8 • 9 U.S.C. §1 Drivers are exempt from arbitration
- 9 • 15 U.S.C. §§1-2 Sherman Antitrust Act violations
- 10 • 15 U.S.C. §15 Clayton Act Suits by person injured
- 11 • 49 U.S.C. §13506 Motor Carrier Exemptions
- 12 • 49 U.S.C. §13506(b)(1) and (2) TNC conduct illegal
- 13 • 49 U.S.C. §13901-13902 Motor Carrier Registration
- 14 • 49 U.S.C. §13904(f) Passenger Broker's Bonds and Insurance
- 15 • 49 U.S.C. §13904(d) Passenger Brokers must register as motor
- 16 carriers
- 17 • 49 U.S.C. §14102 Leased Motor Vehicles
- 18 • 49 U.S.C. §14303 Surface Transportation Board must approve
- 19 contracts to operate property of another motor carrier
- 20 • 49 U.S.C. §14501 Federal Authority over Intrastate
- 21 Transportation
- 22 • 49 U.S.C. §14501(b) Federal limit on State regulation of Brokers
- 23 • 49 U.S.C. §14501(d) Prearranged Ground Transportation
- 24 • 49 U.S.C. §14704 Private Right of Enforcement of Transportation
- 25 laws
- 26
- 27
- 28

- 49 U.S.C. §14707 Private right to Enforce Federal Registration
- 49 U.S.C. §14901 General Civil Penalties for no passenger motor carrier registration \$25,000.00 per violation
- 49 U.S.C. §31138 Insurance Requirements
- California Public Utilities Code §421 Fees for Transportation permits
- California Public Utilities Code §§5430-5439 TNC Enactments
- California Labor Code §221 Unlawful Wage Deductions
- California Labor Code §226.7 Failure to Provide Paid Rest Periods
- California Labor Code §970 Solicitation of Employee by Misrepresentation
- California Labor Code §972 Solicitation of Employee by Misrepresentation, double damages
- California Labor Code §§1182.11, 1194 Minimum Wages
- California Labor Code §2802 Failure to reimburse Expenses
- California Unfair Practices Code §§17043-17044 Selling below cost, unlawful to sell as a loss leader
- California Unfair Competition Code §17200 Unfair Competition
- California Wage Order No. 9 Transportation workers - drivers' to have Employee Status and Workmen's Compensation.

A. THE ENTIRE UBER - LYFT BUSINESS MODEL IS ILLEGAL

The Uber and Lyft Contracts are for an *illegal* Purpose

- 1 3. Since 1942, followed by the 1995 Motor Carrier Act deregulation, it has
2 been illegal for “passenger brokers” to arrange and sell transportation to
3 private motor vehicles for compensation as an occupation or business.
4
- 5 4. A passenger broker, which is what Uber and Lyft do, may only “broker”
6 (sell and arrange) interstate and intrastate passenger transportation to
7 registered passenger motor carriers who, own, rent or lease and
8 commercially insure, the vehicles and drivers they utilize.
9
- 10 5. Federal law also specifically prohibits the selling or arranging, by anyone, of
11 passenger transportation to private vehicles for compensation or as an
12 occupation or business. (49 U.S.C. §13506(b)(2) and 49 CFR§372.101)
13
- 14 6. Defendants Uber and Lyft and the CPUC TNC permits they operate under
15 allow Uber and Lyft to sell and arrange transportation to private vehicles in
16 direct violation of the federal registration requirements. The TNC permit is
17 State authority to do what federal law specifically prohibits.
18
- 19 7. Just as a contract for murder is for an illegal purpose, the Uber and Lyft
20 contracts with the TNC drivers is for an illegal purpose.
21
- 22 8. The entire Uber and Lyft business is for an illegal purpose and the contracts
23 cannot be enforced in any court of law, by Uber, Lyft or the TNC drivers as
24 a matter of law.
25
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Violation of Supremacy and Commerce Clauses

Dormant Commerce Clause and Equal Application Clause Violations

9. This case challenges DOT's violation of the Administrative Procedure Act ("APA") in failing to administer and enforce the wholesale violation of federal transportation laws and regulations by California, the California Public Utilities Commission and Defendant Business entities Uber Technologies, Inc., and Lyft, Inc., and their subsidiaries, Officers', Directors, Agents, and employees.
10. Since at least 2013, the media has reported dozen of murders, hundreds of rapes and uncountable assaults by Uber and Lyft drivers and passengers. The media has also regularly reported Uber and Lyft drivers providing passenger transportation traveling long distance trips across several states, obviously appearing as interstate transportation.
11. In 2016, the major media, ABC, NBC and CBS, reported on Uber Passport, a service provided by Uber for passenger transportation from San Diego, California into Mexico, obviously appearing as foreign transportation commerce.
12. Plaintiff Mendel served complaints on the U.S. Secretary of Transportation, and the Federal Motor Carrier Safety Administration staff, including its

Chief enforcement officer, and other department specialists including engaging in email and teleconference communications.

13. None of these “alerts”, media reports or complaints received any intervention or investigation. As a result of the failure of the Department of Transportation to act, the federal transportation scheme was, and continues to be evaded, violated, and rendered useless.
14. The entire purpose of the federal transportation laws were designed to prevent senseless acts of violence, insure the traveling safety of the American people, including Plaintiff, and provide for adequate financial responsibility for property damage and bodily injury. The failure of the Department of Transportation and the Secretary to act in compliance with U.S. policy under 49 U.S.C. §13101, has rendered the passenger transportation policy goals of the United States ineffective.
15. The entire purpose of Congress’ 84 year constant amendment of the federal regulation of *interstate* and *intrastate* passenger transportation, including the passenger brokering of that transportation ineffective for its intended purpose - the safe travel of passengers, in a competitive, level playing field environment, throughout the United States, has been rendered worthless.

16. As a result Plaintiff has unnecessarily suffered physical injury, been illegally pushed out of his 30 plus year profession of choice and had his rights violated, property and labor taken and business destroyed.
17. The Commerce Clause, as set forth in Article I, Section 8 of the United States Constitution, expressly grants Congress the power “[t]o regulate commerce with foreign Nations, among the several States, and with the Indian Tribes.”
18. The Dormant Commerce Clause is inherent in the power granted to Congress under the Commerce Clause and provides that, even if federal law is silent on an area of interstate commerce, states may not enact legislation that discriminates against or impermissibly burdens interstate commerce. See, e.g., United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 338 (2007).
19. State laws that discriminate against interstate commerce face a virtually per se rule of invalidity under the Commerce Clause. The Supreme Court has explained that “discrimination” in this context “simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” Or. Waste Sys., Inc. v. Dep’t of Env’tl. Quality, 511 U.S. 93, 99 (1994).

20. State laws that are facially neutral nevertheless violate the Commerce Clause if they impermissibly burden interstate commerce in practice. See Healy, 512 U.S. at 194-95. 52. The Supreme Court has repeatedly held that, in all but the narrowest of circumstances, state laws violate the Commerce Clause if they mandate differential treatment of in-state and out-of-state economic interests. Granholm v. Heald, 544 U.S. 460, 466 (2005); C&A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994).

21. The congressional Motor Carrier Act and its amendments, requires active actual federal supervision. Including insuring State compliance with federal law they agreed to comply with. The Defendant Federal officials abandoned these official obligations.

22. The Defendant Federal Officials had a duty to properly administer their departments and personnel. They also have a mandated duty under federal transportation law to exercise administrative and enforcement mechanisms to insure the federal transportation polices, especially Safety are carried out. These officials should have acted under federal regulations (49 CFR 392.9a) when informed by Plaintiff's complaint, reporting the illegal transportation businesses of Uber and Lyft. They did nothing!

23. Both the State and Federal Defendant Officials should have, because the law requires them to - to immediately order both Uber and Lyft "out of service,"

1 at a minimum. (not to mention the enormous fines over \$25,000.00 per trip
2 occurrence) Again, they did nothing!

3
4 24. The Defendant Federal Officials hold the historic records and I.C.C. agency
5 decisions and knew or should have known: Uber and Lyft's, *passenger*
6 *brokering* business to private vehicles for-hire, was illegal and would and
7 has led to criminal carnage, including murder and rape, in the streets!

8
9 25. The named Federal Officials also have a duty and obligation to protect the
10 safety of the American public, including Plaintiff. They neglected and
11 abandoned their duties and purpose, by their inaction.

12
13 26. Uber and Lyft's selling and arranging transportation for compensation to
14 motor vehicles (private vehicles), not motor carriers (registered), as a regular
15 occupation or business is prohibited by 49 CFR §372.101.

16
17 27. In 1949 the Supreme Court explained in detail back then, describing the
18 same criminal and civil misconduct experienced then and re-occurring today,
19 (i.e. murders, rape, assaults, abandoned passengers) by Defendant Officials
20 allowing Uber and Lyft's, illegal, federally non-compliant interstate and
21 intrastate transportation to continue.

22
23 28. The named Federal Officials also failed to enforce against the Defendant
24 California Public Utilities Commissioners' their non-compliance with
25
26
27
28

1 federal regulations, (49 CFR §350.201) which the State of California had
2 committed it would comply with, by accepting MCSAP (highway) funds.

- 3
4 29. The California Commissioners' abused their authority by overreaching into
5 federal *intrastate* and interstate transportation jurisdiction in creating their
6 "new" TNC Permit. *It isn't new it is and has been illegal.*
7

8
9 **B. FEDERAL LAW PREEMPTS THE STATE OFFICIALS CONDUCT**
10

- 11 30. The California Commissioners' failed to comply with federal law, which
12 prohibits, under 49 CFR §372.101, their creation of a "new" Transportation
13 Network Company, "TNC" Permit, allowing Uber and Lyft to sell or arrange
14 transportation to private vehicles as a regular business or occupation.
15
16 31. The only thing *new* is the Defendant Commissioners' bold unlawful grant of
17 authority to Uber and Lyft, and others, via their *new* TNC Permits, to use
18 modern technology to operate a federally prohibited and illegal passenger
19 broker business, which has essentially been outlawed since 1942.
20
21 32. The TNC Permit is essentially an intrastate broker permit, which at a
22 minimum, by the Commissioners' own rules and 2013 DECISION, regulates
23 conduct related to intrastate broker services and is specifically preempted by
24 (49 U.S.C. §14501(1)(b) federal law preempting State interference *related to*
25 ANY [passenger] broker's *intrastate* passenger rates routes and services.
26
27
28

33. Additionally, the TNC permit holder, who also sells passenger transportation for compensation, (is a motor carrier) is prohibited from owning vehicles or fleets of vehicles, a “related to” passenger broker service with *unlawful* State limitation on intrastate broker’s activities, the Commissioners’ may not enact this provision having the force and effect of law under 49 U.S.C. §14501(1)(b).

34. Under federal law motor carriers must own, rent or lease the vehicles they use. Motor carriers provide transportation for compensation, which is what Uber and Lyft do. A broker connects (arranges and sells) a passenger with a motor carrier. Companies can do both, broker and motor carrier, but shall also register as both, to do both.

35. TNC’s Uber and Lyft do both, they provide passenger broker and passenger motor carrier services, but have not federally registered to do either.

36. Defendants Uber and Lyft, under illegal California TNC permits, sell and arrange passenger transportation to private vehicles with the consent of the State of California in direct violation of federal laws and regulations which prohibit and fine 49 U.S.C. §14901, such occupation or business conduct.

37. A California TNC Permittee cannot comply with California’s prohibition of vehicle and fleet ownership and Federal motor carrier law (49 U.S.C. §13902) which requires vehicle ownership responsibility. This conflict

1 presents an impossible situation. When such a conflict occurs the State TNC
2 Permit should be pre-empted. Plaintiff with a federal statutory right of
3 enforcement seeks the relief here.
4

5
6
7 **C. CONSTITUTIONAL RIGHTS VIOLATIONS**

8 **42 U.S.C. §1983 - Civil action for deprivation of rights**

- 9
10 38. The Equal Protection Clause, as set forth in the Fourteenth Amendment,
11 prohibits a state from denying its residents equal application of the law. The
12 U.S. Supreme Court has held the Commerce Clause confers "rights,
13 privileges, or immunities" within the meaning of § 1983. In addition to
14 conferring power on the Federal Government, the Clause is a substantive
15 restriction on permissible state regulation of interstate commerce. And
16 individuals injured by state action violating this aspect of the Clause may
17 sue and obtain injunctive and declaratory relief.
18
19 39. The three considerations for determining whether a federal statute confers a
20 "right" within the meaning of § 1983 -- that the provision creates obligations
21 binding on the governmental unit, that the plaintiff's interest is not too vague
22 and amorphous to be beyond the judiciary's competence to enforce, and that
23 the provision was intended to benefit the plaintiff -- also weigh in favor of
24
25
26
27
28

1 recognition of a right under the Clause. Dennis v. Higgins, 498 U.S. 439
2 (1991).
3

4 40. The Ninth Circuit has recognized the right to challenge the California Public
5 Utilities Commission in federal court when the Commission has exceeded its
6 State authority and regulated in a manner that imposes an unconstitutional
7 burden on interstate commerce. Federal Exp. V California Public Utilities
8 Comm'n, 936 F.2d 1075 (9th Cir. 1991)
9

10
11 41. California Public Utilities Code "CPUC" sections 5430 through 5450 violate
12 the Dormant Commerce Clause because they create State consent to do what
13 federal transportation laws (49 U.S.C. §13506(b)(2)) and regulations (49
14 CFR 372.101) prohibit.
15

16 42. The CPUC Codes §5431(c) allow for a "TNC" permit to (broker) to arrange
17 and sell prearranged passenger transportation to private vehicles for
18 compensation. Federal regulations 49 CFR §372.101 and statutes 49 U.S.C.
19 13506(b)(2) specifically prohibit the arranging or selling of passenger
20 transportation to private vehicles for compensation as an occupation or
21 business.
22
23

24
25 43. Federal regulation 49 CFR 350.201 and federal law over Intrastate
26 transportation requires the States to enforce, 49 U.S.C. 14501(d)(1)(B)
27 requiring State passenger vehicle registration and passenger authority. The
28

1 California "TNC" Codes allow private vehicles without State passenger
2 authority to do what federal laws specifically prohibit; the very federal laws
3 the State of California agreed to uphold.
4

5 44. The result is Plaintiff (and other drivers) are subject, as the motor carriers
6 found on the street, without State and/or federal passenger authority to be
7 subject to punitive fines of \$25,000.00 per violation, under 49 U.S.C.
8 §14901, or for each trip.
9

10
11 45. The CPUC Code section 5434 also limits the insurance liability of the
12 private passenger vehicles, acting as motor carriers of passenger
13 transportation, contrary to 49 U.S.C. §31138. The Code 5440.5(b) continues
14 with recent amendments to apply taxes to passenger transportation
15 indiscriminately (over both interstate and intrastate) arguably or in part
16 engaged in interstate commerce, a taxing territory in the exclusive domain of
17 Congress, and prohibited under 49 U.S.C. §14505.
18

19
20 46. The California Public Utilities Commissioners' and CPUC Does 1-20, State
21 officials violated Plaintiff's Fourth and Fifth Amendment rights as applied to
22 the States under the Fourteenth Amendment.
23

24
25 47. Plaintiff alleges Defendant Commissioners' have violated the Commerce
26 clause as well as, federal laws and regulations and Plaintiff has a Fourteenth
27 Amendment right, under U.S. Supreme Court authority to bring an action for
28

1 his claims under 42 U.S.C. §1983, which is not limited to racial issues, and
2 includes violations of federal laws.

3
4 48. Without a warrant, or other legal process, the Defendant Maritza Perez and
5 CPUC Does 1-20, used unlawful coercion, - the continued validity (active
6 status) of his California TCP Permit, - to unlawfully demand Plaintiff's (and
7 thousands of other drivers) private papers and money.

8
9 49. They deprived Plaintiff of his property, denied Plaintiff due process, in their
10 multiple unlawful TCP Permit suspensions and revocations, unlawfully
11 forcing him out of a legal properly State and federal complaint passenger
12 transportation business.

13
14
15 50. Plaintiff (and other drivers) is however allowed by the Commissioners' and
16 CPUC Does 1-20, to continue to provide interstate passenger transportation
17 under Uber and Lyft's illegal TNC broker transportation business, which
18 subject Plaintiff to federal fines of \$25,000.00 dollars for each violation.

19
20
21 51. Plaintiff has a right to challenge the California "TNC" Codes permitting
22 State approved conduct prohibited by federal law, without first having been
23 fined by the federal government to establish Article III standing under well-
24 established U.S. Supreme Court authority of *Ex Parte Young*, 209 U.S. 123
25 (1908) .
26
27
28

D. THE UBER – LYFT ILLEGAL ARBITRATION CONTRACTS

Uber and Lyft Drivers are by Law Exempt from Arbitration

EXEMPTION INCLUDES PASSENGER AND FREIGHT WORKERS

52. It should be beyond question that “*any other class of workers*” as stated in the Federal Arbitration Act’s section 1, must at least include Uber and Lyft drivers, including Plaintiff, who transport passengers in interstate commerce that Congress has taken to regulate; (49 U.S.C. §14501(d) (Prearranged ground transportation) and “...has jurisdiction of, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier.” (49 U.S.C. §13501).

53. Congress, therefore, obviously regulates the movement of passengers (49 U.S.C. §14501(d)) *and freight* moving in interstate commerce.

54. Plaintiff drove (like all drivers) with a *contract of employment* with Uber and Lyft.

55. Uber and Lyft arrange (broker) passenger transportation across all 48 States.

56. Plaintiff, like the other Uber and Lyft drivers, has provided Uber and Lyft’s passengers’ transportation across state lines, which is the definition of interstate commerce.

57. Plaintiff has transported Uber and Lyft passengers 160 plus miles across California, from California point of origin into Nevada point of destination.

58. Uber and Lyft arrange passenger transportation all across the United States and the drivers cross State lines on a daily basis, again the federal definition of interstate commerce. (49 U.S.C. §13501(1) and 49 CFR §390.5 Interstate commerce)

59. So when Congress says (9 U.S.C. §1) “*but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce, this* must include Plaintiff and every other Uber and Lyft driver crossing State lines by the thousands, every day, across the United States of America.

60. Passenger transportation providers, *passenger and freight brokers and passenger and freight motor carriers*, are federally regulated and are, transportation providers required to register as motor carriers. (49 U.S.C. §13904(d) and 49 U.S.C. §14501(d)(1)(A) and (B) and 49 U.S.C. §§13901-13902)

61. Additionally, a passenger broker may not broker (arrange) passenger transportation services to registered motor carrier until it complies with 49 U.S.C. §13904(f) requiring federal Surety Bonds and Insurance compliance under 49 U.S.C. §31138 and 49 U.S.C. §387.307.

62. Finally, a broker can only broker to registered motor carriers, 49 U.S.C. §13506(b)(2).

63. Plaintiff has provided, just as other Uber and Lyft drivers have - passenger transportation as directed by Uber and Lyft across state lines, including federally regulated non-exempt and exempt *intrastate* passenger transportation as part of a prearranged *interstate* trip, entirely within California.

64. A quote from Federal Motor Carrier Safety Administration, official, Mr. Peter Chandler, Team Leader, Commercial Passenger Carrier Safety Division: (transportation entirely within California can be interstate)

“If a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States, and has prearranged the commercial motor vehicle portion of the trip, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, all transportation during the trip is in interstate commerce because the passenger prearranged the transportation with persistent intent of continuous interstate movement throughout the trip.”

65. The Uber and Lyft drivers are therefore workers engaged in interstate commerce transportation and are federally regulated. “Prearranged Ground Transportation,” under 49 U.S.C. §14501(d), “The Ride Act.”
66. Plaintiff and other Uber and Lyft drivers are, since at least 2013, effectively the beginning of Uber and Lyft’s operations, just like interstate truckers, - transportation workers, regulated by Congress, and exempt from arbitration.
67. The U.S. Supreme Court has said that (even Uber and Lyft) “independent contractors” like Plaintiff have contracts of employment, just like employees, because “a contract of employment” means a contract to do work.” New Prime v. Oliveira, 585U.S. __ (January 2019).
68. The Uber and Lyft drivers are: “any other class of workers, engaged in interstate commerce, and exempt from arbitration under Section 1 of the Federal Arbitration Act. No federal court has jurisdiction to compel Uber and Lyft drivers to arbitration, because private parties cannot grant by contract jurisdiction to the federal courts that Congress choose to withhold.
69. Passenger transportation providers, including ***Internationally*** operating Uber and Lyft, as TNC Permitted transportation providers, (regardless of vehicle size) who provide interstate transportation are required (under 49 U.S.C. §14501(d)) to register as federal motor carriers (49 U.S.C. §13901).

1 70. In Uber and Lyft's case they are required to register as both motor carriers
2 and brokers. (49 U.S.C. §13904(f) passenger broker) Uber and Lyft have not
3 registered as either.
4

5 **E. EMPLOYING TECHNOLOGY –**

6 **How to Strategically Monopolize Passenger Transportation and**
7 **Evade Government Interference**

8 P.T. Barnum, Ponzi and J. P Morgan evolved...

9 Meet Travis Kalanick and Company
10

11 71. Travis Kalanick has a dubious business history. His company *Scour* earned
12 its money by selling copyrighted property it did not own or license. The
13 entertainment companies didn't like this and sued Scour for 250 billion,
14 bankrupting the company. Mr. Kalanick also had publically admitted his
15 problems withholding and paying employee income taxes, though it appears
16 the IRS never took any formal action against him. This mindset, improperly
17 profiting from the property of others, continues with his Uber creation.
18

19 72. Mr. Kalanick, a computer programmer himself, has designed and led
20 several creative computer programs at Uber, like "Greyball," "God View,"
21 and others with improper purposes. Reportedly, Greyball allowed Uber to
22 interfere with enforcement efforts to catch Uber drivers providing
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1 unlicensed passenger transportation, and “God View,” allowed Uber
2 employees to track passenger movements, without rider consent.
3

4 **MR. KANANICK KNEW HIS BUSINESS WAS ILLEGAL**

5 73. Mr. Travis Kalanick’s *published* “Policy White Paper,” essentially admits
6 he knew that brokering passenger transportation to unlicensed private
7 vehicles was as he said: “the technology” known as “ridesharing,” was
8 illegal, while ignoring his own unlawful brokering to licensed livery drivers
9 at the time, all across the United States without federal authority. Mr.
10 Kalanick’s reported foot-dragging to take his company Uber public were
11 well justified concerns, as shown below.
12

13 74. Mr. Kalanick knew that his Uber transportation business operates
14 unlawfully, because he copied his competitors (LYFT) conduct, which he
15 described as...ridesharing...he knew was subject to fines or criminal
16 misdemeanors and despite Uber’s new CEO Dara Khosrowshahi, continues
17 to operate illegally.
18

19 75. Uber and Lyft have evolved into an effective scheme designed to create a
20 monopoly (hidden by the appearance of a duopoly) without government
21 restraint or enforcement.
22

Follow the Money

76. The design of the scheme powers changes through phases and adapts its actions to dominate a market and extract supracompetitive (stock sale) profits, for the insiders, at each phase. The culmination of their business model ends with a dominant market position, a monopoly, successfully extracting supracompetitive pricing accomplished by inadequate well intended government reaction. (i.e., SEE: New York City's recent regulation of rates and vehicle limits, but not contracts, below)
77. Uber and Lyft are then free to claim blamelessness for their illegal monopoly and their hopeful supracompetitive profits. Uber, in particular, has used vague disguises comparing itself to Facebook and Amazon as having the same network and market dominant abilities – in other words, they can dominate a market they claim is in the tens of trillions of dollars.
78. The media have reported that the entire taxi and livery market in the United States, pre Uber and Lyft was 23 billion dollars.
79. Uber and Lyft have increased passenger participation dramatically, at least 5 fold, mainly because they price the transportation below the consumers own cost and that of the drivers under their contracts.
80. Using the pre-Uber and Lyft, taxi average low cost (based on actual costs of operation) regulated taxi rates (set by regulators not taxi companies) of

1 approximately 2.75 per mile and 50 cents a minute, they should have
2 increased their total gross revenue in the United States alone, to something
3 well north of 120 billion dollars, if they were actually increasing
4 competitive value transportation benefiting the social compact.
5

- 6
7 81. Unfortunately, they report considerably less in their respective SEC Form
8 S-1 official filings, combined it's about 52 billion dollars gross worldwide.
9

10 **F. GAME THEORY, FINANCIAL MODELING AND ARTIFICIAL**
11 **INTELLIGENCE**
12

13 **Computer Programs - IBM Proved they win at Chess and Poker...**

14 **1. UBER and LYFT Use Computer Programs Too...**
15

16 **The Difference – Uber and Lyft's Purpose is Illegal!**

- 17 82. Uber started out selling and arranging "brokering" passenger transportation
18 only to State licensed ("TCP") commercially insured passenger
19 transportation providers, 49 U.S.C. §13506(b)(2), with legally questionable
20 broker conduct.
21

- 22 83. Lyft began as "Zimride," essentially a web based billboard mostly set up on
23 or for University's (for monthly or annual fees) where riders and drivers
24 without cost could connect with each other. The University's paid for the
25 matching service.
26
27
28

84. Lyft however evolved into selling and arranging “brokering” passenger transportation for donations to private vehicles, unquestionably prohibited (illegal) (49 CFR §372.101), as rideshare (“ZimRide”) for compensation.

2. UBER and LYFT, Separate Entities - One Monopoly

85. Both companies have *evolved jointly* from their origins, and like IBM’s Chess program, they have created computer programs, artificial intelligence, that avoid regulatory enforcement, (Uber’s “Greyball”) control economic flow, prices, driver behavior, passenger choices, erecting barriers to competition, while displacing and destroying legitimate established competitors, including Plaintiff to secure their (duopoly to mask monopoly) monopoly.

86. The difference is, Uber and Lyft’s computer programs, its “use of artificial intelligence” and business purposes, unlike IBM’s Chess programs, violates federal and California laws for an illegal purpose, and with deception and improper influence, they accomplished their monopoly with unlawful State and improper Federal *pay no attention* Official assistance.

87. The Defendants Uber and Lyft bring their joint resources to bear to lobby regulatory and legislative bodies and execute *highly questionable* legal actions for their near identical unlawful purposes.

1 88. The Plaintiff has lived through, witnessed and experienced their separately
2 appearing yet near identical joint efforts and actions to secure their
3 monopoly.
4

5 ["Pay no attention to that man behind the curtain!" Wizard of Oz]
6

7 89. Plaintiff began driving for Lyft only because Lyft offered a \$1000.00 dollar
8 bonus to any driver that signed up and drove 1 trip in a 1 week window.
9

10 90. Lyft was so deluged with drivers, there was no way all who signed up could
11 be "properly on boarded" because Lyft's resources could not handle the
12 volume of applicants, not because the drivers failed to do their part. Lyft
13 immediately changed the offer. The bad press caused Lyft to back pedal and
14 complete the advertised offer to those who timely signed up.
15

16 91. Uber meanwhile also learned from this incident, and both companies in near
17 identical lock step protect their "offers" and "payouts" to drivers and riders
18 by their respective computer programs, orchestrating behind the curtain of
19 their smartphone application displays.
20

21 92. Passengers are provided a display of available vehicles, not based on actual
22 available vehicles, but based on the vehicles Uber and Lyft want available
23 for their income needs. Likewise they have displayed Surge and prime time
24 to drivers (as well as higher base compensation) to encourage driver location.
25
26
27
28

1 93. Both Uber and Lyft promote their “number of drivers” as needed to provide
2 quick response to passengers. That may be truth in part. The *real* effective
3 truth is it promotes their ability to manipulate passenger behavior and driver
4 services while controlling each driver’s ability to accumulate compensation.
5

6
7 94. They know which drivers are (need to be) fulltime and part time, which
8 passengers tolerate higher prices and which only want cheap prices and they
9 take advantage of all their “data” to discriminate against both, in real time.
10

11 95. Some examples witnessed by Plaintiff:

12 a) Plaintiff had earned a weekly bonus of \$100 dollars for completing
13 60 trips and was close (3 trips away) to earning a weekly bonus of
14 \$215 for 100 trips completed. However, this bonus had a string
15 attached; the acceptance rate had to be 90%. Plaintiff went to
16 Levi’s stadium as promoted by Uber and Lyft. The Uber and Lyft
17 programs began offering Plaintiff trips outside the “designated
18 holding lot” where he was supposed to be, and offered non-surge
19 or prime time trips 15 to 20 minutes away wiping out Plaintiffs
20 acceptance rate and eliminating all weekly trip completed and
21 potential bonuses. Both could have limited trips offered to the
22 drivers located in the holding lot by location data, but that would
23 mean paying earned bonuses.
24

25 b) Plaintiff with six other Uber Black car drivers set up an experiment
26 to discover why or how Uber appeared to be diverting and
27 cannibalizing Uber Black business in morning rush hours.
28

- 1 c) We positioned ourselves at varying distances (half a block to $\frac{3}{4}$
2 mile away in suburban neighborhood) from a regular Uber Black,
3 Tuesday 8:00am, *airport destination* passenger. In regular text
4 communications between the drivers, at 8:10am no one had
5 received a ping from the passenger. We all had the same Uber
6 passenger app open of provided view of available vehicles (Uber
7 Black, Select, and UberX). At 8:14am, Plaintiff received the
8 passengers ping for service, but not as Uber Black, as Uber Select.
9 (Plaintiff was logged in as both on two different phones and
10 accounts)
- 11 d) Upon arrival, Plaintiff inquired why the regular Uber Black
12 passenger had ordered Uber Select. The Passenger said he was late
13 in ordering a car, and the app told him the nearest Black car was 12
14 minutes away, and the Select car was 2 minutes away. (Plaintiff
15 was around the corner from passengers short pipe stem street in a
16 church parking lot as both Uber Black and Select)
- 17 e) The deception here was twofold. It misrepresented to the passenger
18 the cheaper (Uber Black was a lower flat rate to the airport, Select
19 was more expensive by the mile and minute trip. Uber's fee
20 commission was 25% for Black and 30% for Select.
- 21 f) Needless to say the passenger and driver[s] were not pleased by the
22 deception played on them. The passenger paid more; the driver
23 received less net compensation; for the same vehicle and driver to
24 the same destination. The driver, not remotely located Uber
25 received the passenger's discontent.
26
27
28

- 1 96. Defendants' Uber and Lyft are in the business of selling transportation
 2 through Plaintiff who they misclassify as an independent contractor rather
 3 than an employee under the California Supreme Court decision in Dynamex
 4 Operations West, Inc. v. Superior Court, 4 Cal.5th 903 (2018) because
 5 Plaintiff provides work that is the Defendants Uber and Lyft's usual business.
 6 Without Plaintiff's (and other drivers) providing the vehicle and labor as
 7 TCP or TNC service, neither would exist.
- 8 97. Uber and Lyft's business is sales and arranging, "brokering," of interstate
 9 passenger transportation, mixed with federally regulated intra-state trips
 10 making all of Uber and Lyft's transportation business without federal
 11 authorization, regardless of the various vehicle sizes, styles, or 7 or less
 12 passenger capacity, unlawful.

13 3. DRIVERS ARE CONTROLLED LIKE ROBOTS

- 14 98. Uber and Lyft control every critical economic and performance factor of the
 15 drivers and the drivers *forced* choice of hours worked:
- 16 a) The TNC drivers have no independent license to operate
 - 17 b) TNC drivers are totally reliant on Uber or Lyft for passengers;
 18 (Taxis can accept and search for street hails, TCP drivers can have
 19 independent business with passengers)
 - 20 c) The numbers of passengers available;
 - 21 d) the drivers' compensation for fares;

- e) the types of rides the passengers see available;
- f) the quantities and types of trips they offer to the drivers.
- g) Bonuses and incentives structured not for driver profit but driver performance in line with their algorithms and their profit.
(A low acceptance rate or not enough trips you lose bonus)
- h) They combine their control of the flow of business with control over driver behavior by a rating system using passenger sensors with their algorithms, monitoring fast accelerations, harsh braking, to control and discipline the drivers in many ways more comprehensive than human supervisors and employers ever could;
- i) Uber and Lyft even control and monitor the driver route taken using price to stimulate participation and compensation to control driver long hauling while extending a drivers work hours by economic force to achieve a profit above raw costs.
- j) Uber and Lyft use economic force to control total driver hours worked.

99. The only thing Uber and Lyft do not control is the drivers physical control of the vehicles used.

100. Uber and Lyft's near absolute control, except for the driver's actual driving the vehicle as described above is nearly the pure equal to Artificial Intelligence "AI" Cars they claim will make them profitable, it hasn't and, it won't.

1 101. Uber and Lyft's false argument that drivers can start and stop whenever they
2 want defies their manipulated economic force and reality.

3
4 102. A tank of gas starts at \$35 dollars, the wear and tear on the drivers' vehicle
5 has a cost, and a driver must work to pay for these costs, before earning a
6 nickel's worth of labor. Even a "part time" driver must cover costs to justify
7 their expenses and labor effort.
8

9
10 **Real World Example - Algorithm Driver Earnings**

11 103. Some basic math at current Uber and Lyft unilateral driver compensation -
12 Renting a car from Uber or Lyft – (but they are not supposed to operate
13 fleets of vehicles under TNC permits, which have never been enforced by
14 the CPUC) - has a low daily cost between \$75 and \$85 dollars a day, for
15 vehicle and gas, with an average generous assumption of gross trip fare of
16 \$11 dollars each, less the unlawful broker commission, requires at least 9
17 trips and 4.5 hours of time to break even on expenses, the driver must
18 continue to drive for another 4.5 hours to earn another \$85 dollars for a 9
19 hour gross of \$170 dollars and a net of \$9.44 dollars per hour.
20
21

22
23 104. The assumptions were, "perfect world" generous and assumed a constant
24 flow of "non-manipulated" trip offers and the driver's ability to run
25 uninterrupted for 9 hours. Still it required 9 hours below minimum wage and
26 no overtime pay. The reality of operations is worse.
27
28

1 105. The Reality: It requires 300 (30 percent of miles are deadhead) to 500 miles
2 a day and 14 to 16 hours a day to keep net profitable. There are virtually no
3 real profitable part time “gig” drivers for Uber and Lyft.
4

5 106. Drivers, like Plaintiff, who own their commercially registered vehicles (and
6 TNC private vehicles), are worse off; they have commercial insurance and
7 maintenance costs, too.
8

9 107. Drivers do not *freely* choose their hours, the algorithms control of the daily
10 ebb and flow of riders and driver economics related to expenses, distribution
11 of passengers, how many, which (rush hours) hours, and how long a driver
12 must work. The Uber and Lyft misrepresentations of these factors claim the
13 drivers are making independent decisions and control their own profit or loss
14 destiny.
15
16
17

18 108. The reality is Uber and Lyft algorithms control driver vehicle choice, work
19 hours, required overtime hours, what services to offer, what prices are paid,
20 so the drivers’ destiny for profit occurs with compliance or suffers a loss for
21 non-compliance with the Uber and Lyft’s algorithm control.
22

23 109. Uber and Lyft’s algorithms act like nearly most employers, only they have
24 improved the “suffer or permit” standard at constantly monitored and
25 executed levels of control not achievable by human employer supervision.
26
27
28

1 110. The truth about Uber and Lyft is that the full time drivers handle 80% of the
2 transportation Uber and Lyft arrange so drivers in fact do not control
3 anything; failing to work long enough leads to certain losses, and only full
4 time overtime hours, below minimum wages, yields a gross profit.
5

6 111. Further, Uber and Lyft do not pay anything for the necessary waiting time
7 for a “ping” and deadhead miles every driver must spend to get just one trip.
8 A significant 30 percent of time spent and deadhead miles spent as driver
9 expenses are current and real, yet the Uber and Lyft “AI” car promotional
10 argument avoids.
11
12

13 112. Time is money and AI cars deadheading without out revenue still have wear
14 and tear and exhausts available time not earning money.
15

16 113. The drivers have no independence, and do not choose when or how many
17 hours they are available to work, its false Uber and Lyft promotional
18 economic hyperbole; everything is controlled by Uber and Lyft (see list
19 above).
20
21

22 114. They control vehicle choices, amount of fares, compensation, driver conduct,
23 track the route taken to and from destinations, including tracking the off trip
24 miles. They use the fare paying passenger as rating sensors combined with
25 their computer algorithms to control every critical behavior and economic
26 decision of their “so-called” independent contractor drivers.
27
28

1 115. The drivers are nothing more than human robotic labor that cost Uber and
2 Lyft only what they unilaterally want and decide to pay, with no basis or
3 consideration for Plaintiff's (or other drivers) costs.
4

5 116. The future, of Uber and Lyft's AI car ambitions, including AI computers and
6 sensors to service, refuel and clean these vehicles will only increase their
7 actual costs well above what they now avoid or outright steal.
8

9 117. Finally, not one TNC driver, and most TCP drivers like Plaintiff (outside
10 New York City limits of the Taxi and Limousine Commission jurisdiction),
11 in California has any (TNC have no legal license to) real ability to grow a
12 customer base separate from the Uber and Lyft monopoly; Uber and Lyft
13 drivers cannot convert the; "leads generated" into regular fare paying
14 customers, the algorithms fix that by insuring "unique passenger matching."
15
16

17 118. Unfortunately, the drivers taught both Lyft and Uber why and how to limit
18 drivers having regular customers. Drivers would be within 2 or 3 trips from
19 achieving a bonus, after experiencing, like Plaintiff, 12 to 14 hours with no
20 pings for trips and they found a solution. Call a friend, have the friend order
21 and take 2 or 3 short minimum fare trips, total under 20 dollar costs, to
22 secured \$100 to \$500 dollar bonuses. Uber and Lyft eliminated their expense
23 and the drivers independent (calling a friend and selling your services,
24
25
26
27
28 collecting the fares, is not unlawful, until Uber and Lyft say it is) operation.

1 119. TNC drivers work for Uber and Lyft's passengers or not at all. The TNC
2 drivers' have no ability to independently acquire, (like taxis) service new or
3 secure regular riders.
4

5 120. In fact the Uber and Lyft applications do not match closest or repeat rider-
6 driver trips, the algorithms deliberately avoid repeat riders, and base bonus
7 driver payments on "unique riders" and ding "repeat riders" which the
8 algorithms control.
9

10
11 121. Drivers like Plaintiff, who work under a California TCP Permit, are while
12 independently licensed, in essentially in the same position as TNC drivers;
13 because, again outside New York City, throughout the United States, they
14 *must compete with TNC private vehicle passenger rates* lower than TNC
15 drivers' costs AND at less than one third the legally licensed and insured
16 Plaintiff's TCP licensed rates.
17

18
19 122. Thanks to Uber and Lyft's unilaterally established TNC predatory rates at
20 less than one third the legally licensed TCP and government regulated Taxi
21 rates, no legal operator can compete. The barrier to competition Uber and
22 Lyft have created unlawfully restrains competition even as it cannibalized
23 Uber's Black and Lyft's Lux passenger services. This predatory price action
24 did increase participation of riders and drivers to improve the one metric
25 they use to sell and attract stock investors, "growth" of participants.
26
27
28

4. THE THREE PHASES OF MONOPOLIZATION

123. The Uber and Lyft's scheme has three main phases.

124. The first phase takes advantage of venture capital money to resist regulation and institute below cost predatory pricing, keeping drivers indentured, while attracting consumers and driving out the competition, leaving a barrier to any new competitive entrants.

Misrepresenting the Cost Benefit of AI Cars

125. One tactic Uber and Lyft use to attract new and keep existing investors is to misrepresent as cheaper the costs to use "AI Cars" instead of drivers.

126. As Uber has already proven with 40,000 Uber Xchange leasing cars, with drivers as caretakers and paying usurious rates for the privilege. When used commercially, the vehicles rapidly lose value and require three to six times more service, much more maintenance, (ie. not twice yearly oil changes, but twice monthly oil changes) inflicting a reported 531 million dollar loss for Uber's vehicle leasing effort.

127. The idea that it makes any rational economic sense for anyone, including Uber and Lyft, to buy the millions of vehicles that Uber and Lyft currently have at their disposal in which they have no acquisition cost, unilaterally set below cost rates for, and do not pay for the operational expenses of, without

1 the added cost of artificial intelligence equipment is beyond all rational
2 business or common sense.

3
4 128. The second phase takes advantage of the public stock investor money, to
5 continue the predatory pricing, severely crimping driver income to painful
6 insolvency levels, while varying discounts and surge (prime time) pricing to
7 passengers to increase market share and insure survival to reach the third
8 phase.
9

10
11 129. The third phase, where Uber and Lyft are now, completes the scheme;
12 having created a dominant market position, a duopoly, with
13 supracompetitive pricing created not by them, but by government order,
14 (SEE Section: *New York City Difference* below) enforcing minimum labor
15 and expense payments and limiting the number of vehicles allowed to
16 operate.
17

18
19 130. At each stage the Uber and Lyft insiders profit from private stock sales, like
20 Ponzi, adding new investors and capital, insuring the business can continue
21 to appear to reach its ultimate goal of monopolization and supracompetitive
22 profits. Or as J. P. Morgan once said, "I like a *little* competition."
23

24
25 131. The brilliance of this scheme is the deception used to cover the combined
26 illegal methods and means used to orchestrate it, including the improper
27 assistance of the government, including Uber and Lyft volunteering to pay
28

1 “new regulatory fees,” which come out of the consumers’ pocket, not Uber
2 and Lyft’s, yet, adding to the governments’ coffers, in what is today called,
3
4 “regulatory capture.”

5 132. Uber and Lyft also orchestrated other adaptations to their revenue stream at
6
7 key points. Prior to fund raising and Court action settlements, both
8
9 companies cut passenger prices and drivers compensation.

10 133. The purpose of cutting passenger prices was to increase growth in
11
12 passengers and passenger participation the metric they use to excite and
13
14 entice investors, not a path to or actual profits from operations. In fact, Uber
15
16 CEO Mr. Kalanick claimed that Uber would reach profitability in 2016,
17
18 they didn’t, and claim they haven’t.

19 134. As for cutting driver compensation, Uber, in front of a potential 100 million
20
21 dollar settlement and Lyft, in front of a 27 million dollar settlement, either
22
23 cut compensation directly or began “guaranteed pricing to riders” both
24
25 designed to increase the spread between driver compensation and passenger
26
27 fares, taking the proposed settlement money they would have to pay months
28
down the road, directly from the drivers pockets.

Game Theory and Artificial Intelligence

135. However, this Uber and Lyft scheme is no different than previous illegal Ponzi and Antitrust schemes. The brilliance of the scheme was its implementation on many levels, courtesy of the evolution of computer technology, artificial intelligence, and game theory.
136. Think of the computer chess inputs; piece movements, rules, strategies, player ability, in the same way IBM taught its computer to play chess and win. Only here the Uber and Lyft computer program requires transportation inputs; drivers, vehicles, and government rules, antitrust, transportation and labor regulations, Court rules, all with an end game - beat the established regulatory system.
137. One of Uber's early forays was its reported "Greyball" program designed to obstruct local (ie. Portland, Oregon) law enforcement in stopping Uber drivers from operating without a license.
138. Uber and Lyft's business model does the following:
- a) Following *Ponzi*; it robbed Peter to pay Paul; i.e. Uber and Lyft paid drivers less than their costs and supplemented the cost savings with venture capital funding (make it look legit), to subsidize their version of allowable predatory below cost passenger fares pushing out competitors; Simultaneously using surge or prime time pricing to

1 increase passenger fares, increasing the price spread to reduce their
2 losses.

3
4 b) Uber and Lyft used self-manipulated private stock appreciation to
5 lure and keep investors. Said another way Uber and Lyft sold private
6 stock through multiple series, on a *metric* proving increasing passenger
7 count and participation, at higher and higher stock valuations.
8

9 c) They used *per se* illegal horizontal maximum price contracts with
10 the “independent contractor” drivers.
11

12 d) ...all while creating barriers to defeat established competitors and
13 prohibit new market competitors –
14

15 i. Uber at 65 percent and Lyft at 35 percent control 90 percent
16 of the “rideshare” market, in the United States, with nearly
17 identical pricing in each market, and submarket. (A
18 Standard Oil antitrust redux)
19

20 ii. They publicly established their ruthless predator reputation;
21 i.e. in their return to the Austin, Texas market where they
22 drove out new and established for profit competitors,
23 previous independent competitor drivers, livery and taxi,
24 have had no choice but to join Uber and Lyft;
25
26
27
28

- 1 iii. ...taxi companies, most of whom have government
2 controlled higher real rates to cover actual expenses with
3 regulated profits; have prices nearly 3 times (by market) or
4 more than Uber and Lyft's predatory passenger fares;
5
6 iv. Resulting in the taxi and livery companies dramatic
7 collapse in size, merging their remnants, dissolved or
8 declared bankruptcy.
9
10

11
12 139. The result of this scheme is in full completion mode. In New York City,
13 (with more to follow, i.e. Connecticut) they recently established an hourly
14 labor and expense rate applicable to Uber, Lyft and other Transportation
15 Network Companies, or "TNC" or rideshare companies².
16
17

18 **G. THE NEW YORK CITY DIFFERENCE**

19 **Proper Vehicle and Driver Regulation Saves Lives**

20
21 140. The difference in New York City is significant. Because the Taxi and
22 Limousine Commission, "TLC" requires compliance with federal law, *in*
23 part, under 49 U.S.C. §14501(d). The TNC vehicles are required to have a
24

25
26
27 ² TNC, Transportation Network Companies, Rideshare are both interchangeable
28 and refer to the same conduct, arranging passenger transportation to private vehicles for
compensation.

commercial TNC vehicle registration and the drivers a commercial license for passenger transportation which severely limits driver opportunity misconduct.

Regulated as “Prearranged Ground Transportation” for a Reason

141. The TNC’s Uber and Lyft however do not comply with 49 U.S.C. §14501(d)(1)(C), in New York City. Federal law requires a contract between the transportation provider and the passenger, without the contract between real identified entities, and Uber and Lyft’s lack of legitimate contract (including their waybills) fertilizes an environment for “unidentified passengers” to take advantage of the drivers.

142. Like the Plexiglas screen barrier in taxi’s the federal contract requirement, doesn’t just show locations, services and pricing, it acts as a virtual barrier because both parties are by operation *identified* and future whereabouts can be determined.

143. Media reports, not surprisingly report a recent video went viral on the internet of a New York City driver being violently beaten by the passenger.

144. While the media reports a profuse amount criminal driver abuse across the nation, it doesn’t happen, but rarely in New York City who’s had more than 50,000 TNC rideshare drivers on the streets among 8.5 million potential

1 passengers daily, because of the regulatory “process,” the TLC has created
2 in compliance with federal law 49 U.S.C. §14501(d)(1)(B).
3

4 145. Passengers however, who know their identity is obscured, can and have
5 taken advantage of the situation, where the driver is vulnerable, and without
6 a taxi shield between them, the assaults continue.
7

8 146. New York City’s Taxi and Limousine Commission, because of Uber and
9 Lyft’s (and copycats) predatory pricing which pushed career drivers so hard
10 into financial insolvency, at least 8 driver committed suicides, one 30 year
11 veteran driver blew his brains out, on the steps of New York’s City Hall.
12

13 147. The Taxi and Limousine Commission, “TLC” has now mandated minimum
14 hourly labor and an expense rate, on the TNC’s, including Uber and Lyft.
15

16 148. This TLC action has raised the rates of passenger fares, to supracompetitive
17 levels, not by Lyft or Uber, but by the government. (quieting passenger
18 complaints)
19

20 149. Uber and Lyft already dominate the New York City market, with a reported
21 50,000 TNC cars a day operating, against legally licensed medallion taxis of
22 less than 14,000, they have therefore established themselves, created a
23 monopoly, and still avoiding federal broker, motor carrier and insurance law.
24

25 150. The difference is Taxis are inherently local, exempt from federal law and
26 operating legally. Uber and Lyft operate nationally interstate passenger
27
28

1 transportation enterprises, in New York City, and the nation, in violation of
2 federal law.

3
4 151. By operation of New York's TLC imposition of labor and expense law, Uber
5 and Lyft will now have supracompetitive pricing, (which is what they want)
6 for their monopoly (duopoly) and bigger profits, as they extract their
7 federally unlawful fees by greater percentages, above the costs of drivers.
8

9 152. Uber and Lyft's vehicles number more than three (3) times the number of
10 New York Taxi cabs on the streets.
11

12 153. Uber and Lyft's illegal TNC vehicles out number legal taxi's and livery
13 vehicles much worse in Plaintiff's San Francisco Bay area market³.
14

15 154. The beginning of this entire illegal scheme should probably be laid at the
16 feet of the California Public Utilities Commission⁴, the Defendant
17 Commissioners'.
18

19 It's well past time to reestablish the rule of law and ordered liberty.
20
21
22

23
24
25 ³ The San Francisco Bay Area Market is defined and includes all nine (9) counties that
26 are adjacent, adjoin or extend from the boundaries of the City and County of San Francisco, in
all directions.

27 ⁴ The California Public Utilities Commission or California PUC, or "CPUC" are
28 interchangeable throughout this document in reference to the Commission.

H. GOVERNMENT OFFICIAL'S BETRAYAL OF OFFICE

The Public Safety Requires Active Actual Federal Supervision

155. Uber and Lyft's illegal business enterprises' could never have reached, on a national scale, the dramatic increase in criminal and civil misconduct that did occur and continues. This is the same misconduct, and unsafe conditions, that led to the prohibition of brokering transportation to private motor vehicles, by the Interstate Commerce Commission, back in 1942!

156. But for the Federal and State Officials' failure to execute their essential duties, we have a repeat result: dozens of murders, hundreds of sexual assaults, and unaccountable physical assaults, and growing, to innocent passengers and drivers. The damage includes the theft of the labor (California IWC Wage Order No. 9) and property of hundreds of thousands of California's deceived drivers, by Uber and Lyft's unscrupulous conduct, one of which is the Plaintiff here.

157. The U.S. Supreme Court explained the overarching federal (I.C.C.) regulatory purpose, SAFETY, in California v. Zook, 336 U.S. 725, in (1949).

158. The Federal Defendant Officials have debased their oaths of office by refusing to perform their primary duty to insure the safety of the American people and Plaintiff.

Federal Official Indifference Contributed to Death and Injury

159. The Defendant federal officials, knew or should have known (they slept at the wheel) that they were allowing the several States' to violate their agreements, with the federal government, which is regulated, 350.201, to comply with federal registration requirements, 49 CFR 390.9a.

160. The States are required (49 CFR§350.201) to enforce the operative federal prohibition of Uber and Lyft's selling or arranging passenger transportation to private vehicles as an occupation or business, 372.101.

161. There has been dozens of murders, hundreds of rapes, and daily assaults, of innocent passengers and drivers, and it continues on a daily basis, most of it would be preventable if the federal regulatory scheme were actually administered and enforced by Defendant Federal officials.

162. The federal Department of Justice had no trouble challenging the State of Arizona in a suit in federal court for its **Arizona Senate Bill 1070**, (seeking to limit harm, unlike the California TNC laws which promote harm) **in** which Department of Justice lawyers argued should be declared invalid because it improperly preempted federal law, and in fact Uber's own current General Counsel, Tony West, former Assistant Attorney General, of the United States, who therefore obviously understands federal preemption of State laws, was on that case.

1 163. It begs credibility that Uber's General Counsel, Tony West, with hundreds
2 of lawsuits against his employer Uber, knows or should know that his
3 employer has been alleged to operate in violation of federal laws and that the
4 State authority TNC and TCP permitting, particularly California's where his
5 office is, is not federally preempted by federal transportation laws.
6
7

8 164. Likewise, Lyft, whose national brokering of interstate transportation is no
9 different in substance than Uber's, hired the former U.S. Secretary of
10 Transportation, Anthony Foxx. According to Bloomberg News, Lyft hired
11 the former Secretary to "help the ride-hailing company navigate new
12 regulatory roadblocks across the United States." Lyft named him the "Chief
13 Policy Officer and Advisor." To date Lyft still has not registered as a broker
14 or a motor carrier, or complied with federal insurance requirements.
15
16
17

18 165. AGAIN, it begs credibility that the former U.S. Secretary of Transportation
19 has no idea that operating across the United State and Canada, as Lyft does
20 would not be subject to federal regulation by his former agencies.
21

22 166. To date no federal official, even with Plaintiff's written complaints to the
23 U.S. Secretary of Transportation and teleconferences with the officials
24 informing the federal FMCSA government official Loretta Bitner, Chief of
25 Enforcement, of the problem has resulted in only one active response,
26 silence.
27
28

1 167. The Defendant federal officials knew or should have known that failing to
2 actually perform their primary duties and hold States, including California,
3 accountable to their agreements with the federal government, to act
4 compatibly, to comply with, and to enforce federal transportation laws
5 would lead, as it has in the past, to serious injury and death of innocent
6 drivers and passengers. They have the history, records of Interstate
7 Commerce Commission, "I.C.C." decisions and the laws of Congress.
8 Again, asleep at the wheel.

9 168. The Plaintiff has, because of the federal officials inaction, suffered
10 deprivation of rights by California, passenger assault, illegal competition
11 taking business away from his legal business, loss of liberty and property by
12 allowing California's State Public Utilities Officials to abuse their authority
13 invading federal jurisdiction, (and other States), and California's unlawful
14 legislative federally prohibited TNC enactments to occur and continue all
15 because of their continued improper, idle and constitutionally disloyal
16 tolerant conduct.

17 169. Plaintiff seeks declaratory and prospective injunctive relief to secure their
18 compliance with and official duty to, actually supervise, administer and
19 enforce the federal transportation regulatory scheme to insure the safety and
20
21
22
23
24
25
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28

1 transportation regulatory infrastructure in conformance with the Nation's
2 policies (49 U.S.C. §13101).
3

4 **I. THE STATE OFFICIALS UNLAWFUL CONDUCT**

5 170. Uber and Lyft's illegal business enterprises' would never have been
6 possible, but for, the Defendant State Officials abuse of authority in creating
7 a TNC permit that violates their federal obligations (49 CFR §350.201) and
8 federal regulations (49 CFR 372.101) and federal law (49 U.S.C. §13506(2)).
9
10

11 **The Beginning – CPUC Creates *Frankenstein* TNC Permits**

12 ***Violates Federal Preemption of State Interference***

13
14 171. The Defendant California Public Utilities "CPUC" Commissioners', (now
15 with other States) violated California's (and other States) agreement to
16 comply and enforce federal transportation laws.
17

18 172. They created an illegal intrastate broker authority, a TNC Permit, to arrange
19 transportation with private vehicles (49 CFR §372.101), for the Uber and
20 Lyft's they claim to regulate.
21

22 173. Aside from the illegal broker authority purpose, the CPUC is specifically
23 prohibited from enacting any provision having the force and effect of law
24 *related to* ANY intrastate broker; intrastate rates, intrastate routes or
25 intrastate services (49 U.S.C. §14501(b)).
26
27
28

1 174. They abused their authority (49 CFR §350.201) and unlawfully invaded
2 federal jurisdiction granting State permission (TNC Permit) to Uber and
3 Lyft, to do what federal regulation (49 CFR §372.101) prohibits, violating
4 federal law, (49 U.S.C. §13506(b)(2)) and the Commerce clause routing the
5 Supremacy clause of the U.S. Constitution.
6

7
8 175. Their DECISION of 2013, creating the TNC Permit, unleashed federal
9 regulatory controls, designed in great part for safe national transportation
10 and which prevented murders, rape and assaults of innocent people, as had
11 occurred in the past.
12

13
14 176. Uber and Lyft's regulatory defiant operations have created an *easy entrance*
15 environment - inviting criminal activity while also taking advantage of the
16 large U.S. alien population's (70 percent of the drivers, English is not their
17 first language) labor force for less than fair value; many unauthorized to be
18 in or work in the United States.
19

20
21 177. Uber and Lyft's induction methods and lack of sufficient driver vetting of
22 unauthorized aliens, who already display their lack of respect for law and
23 order by their presence have committed atrociously violent murders and rape
24 all across the United States, including the San Francisco Bay area market.
25

26 178. Uber and Lyft reduce the *Coyotes* south of the Mexican-American border
27 into rank amateurs. Illegals don't (can't strike) complain and Uber and Lyft
28

1 claim they are not responsible for the conduct of these, “independent
2 contractors.”
3

4 179. The Commissioners’ “TNC” creation, and their unequal application of, or
5 failure to equally enforce, California’s labor laws, especially IWC Wage
6 Order No. 9, which was enforced against Plaintiff, BUT apparently not
7 against Uber and Lyft, because Uber and Lyft continue to loot drivers of
8 their labor, property and ability to support themselves and their families,
9 while failing to provide mandatory Workmen’s compensation for this
10 inherently dangerous work.
11
12

13
14 180. The California Commissioners’ besides creating their illegal TNC permit has
15 not done anything to actively regulate, enforce, reconsider or prevent the
16 harms to California citizens and Plaintiff that their illegal permit has invited.
17

18 181. Meanwhile, the Commissioners’, motivated by increased revenues of tens of
19 millions in unlawful Public Utilities Commission Transportation
20 Reimbursement Account “PUCTRA” fees (PUC §421) , mostly from Uber
21 and Lyft, for the California purse, apparently secures their official
22 Commission careers, while unlawfully putting irritants like Plaintiff who
23 refused to pay their repeated unlawful fees and late payment fines, out of
24 business.
25
26
27
28

1 182. The fact is, if Uber and Lyft operated legally, employing federal registration,
2 insurance, and labor (including eVerify) laws, rather than disrupting
3 (violating) the laws regulatory purpose, safety; the violence and criminal
4 conduct they inflamed would be, as the Interstate Commerce Commission
5 has previously proven, be dramatically reduced and drivers would not be
6 robbed of their labor and property and markets would be openly competitive.
7

8
9 183. Congress permanently removed the exemption for “rideshare” for-hire under
10 49 U.S.C. §13506, to further insure it would not be revived by its Federal
11 Motor Carrier Safety Administration (49 CFR 372.101) or the States.
12

13
14 184. The trouble for Uber and Lyft is that the truth of the size of the “legal
15 passenger transportation market,” contrary to their Securities and Exchange
16 Commission Form S-1, disclosures bragging of the size of “the available
17 market” in the tens of trillions would drop to reality; from trillions way
18 down to billions; it’s not a ten trillion dollar market, as the Uber Securities
19 and Exchange Commission, Form S-1 states.
20
21

22 185. No other company has had the nerve to claim an *available market* of tens of
23 trillions of dollars. Investors are already pushing back, and suits are being
24 filed around the country.
25

26 186. The California Public Utilities Commission and its Commissioners’ are
27 required, under 49 CFR §350.201, to enforce federal motor carrier and
28

1 broker registration requirements and to only adopt laws, regulations and
2 rules that are compatible with the federal laws and regulations.
3

4 187. They didn't comply; they defied both the obligations of the State of
5 California which had agreed to comply, by accepting MCSAP funds, with
6 federal transportation laws and their own oath of office duties.
7

8 188. They abused their official State authority in creating and TNC permitting
9 Uber and Lyft's illegal passenger transportation business.
10

11 189. Uber and Lyft used – (now officially condemned) improper lobbying
12 influence over the Defendant State Officials. Lyft for its part paid former
13 CPUC Commissioner (fined \$32,500.00 dollars) Susan Kennedy, who had
14 no lobby license, \$15,000.00 a month to lobby the Commissioners.
15

16 190. The Commissioners' with reckless abandon, acted beyond their lawful State
17 authority (49 CFR §350.201, PUC Code §421), in direct defiance of State
18 Laws, and in conflict with superior federal transportation authority (49 CFR
19 §372.101, 49 U.S.C. §14501(1)(b), to unlawfully grant Uber and Lyft TNC
20 and TCP permits, to permit conduct which is federally prohibited.
21

22 191. The Commissioners' seemed more concerned with collecting unlawful
23 PUCTRA permit fees, in the tens of millions of dollars, for allowing Uber
24 and Lyft to operate and continue to operate, a federally prohibited, illegal
25
26
27
28

1 transportation business enterprise, under law, 49 U.S.C. §13506(b) and 49
2 §372.101 which states:

3
4 a) - selling, arranging for, transportation to private vehicles as a
5 regular occupation or business is prohibited –(and illegally
6 competing against Plaintiff’s lawful TCP Permitted business) – all
7 while the Commission extracted illegal State license fees
8 (CPUC§421) from Plaintiff and other TCP permitted drivers.
9

10
11 192. The Defendant Commissioners’ and their staff, CPUC Does 1-20, not only
12 didn’t stop Uber and Lyft’s State unlicensed activity, they aided them by,
13 entering a “Settlement Agreement” allowing them to continue operate
14 unlawfully; again violating their oaths of office, including California’s
15 agreements to comply and enforce federal transportation laws, and violating
16 federal 49 CFR§350.201, regulations.
17

18
19 193. The Commissioners’ created an illegal TNC Permit to allow the permittee to
20 sell or arrange passenger transportation to private vehicles; which allows
21 Uber and Lyft to operate a transportation business that is federally prohibited
22 49 U.S.C. §372.101, improperly invoking the shield of their State plenary
23 and legislative authority to regulate transportation in the State of California.
24

25
26 194. The Defendant Commissioners’ administered their illegal creation directing
27 their staff, employees and agents, Does 1-20 here, to issue their illegal TNC
28

1 and TCP Permits to Uber and Lyft, allowing them to compete illegally with
2 Plaintiff, and other legal transportation (Taxi and Livery) providers.
3

4 195. Uber resisted the Commissions' DECISION of 2014, which directed CPUC
5 Does 1-20 to audit and assess Public Utilities Transportation Utilities
6 Account, or "PUCTRA" TCP Permittee fees for the past three (3) years,
7 (reported to be as much as 77 million dollars) because Uber Technologies
8 Inc., had been continuously operating as a "primary" TCP passenger
9 transportation provider (a CPUC defined "primary provider") without
10 authority.
11
12
13

14 **Violating Plaintiff's Fourteenth Amendment Rights**

15 196. CPUC Does 1-20 went to work, as directed, even before the effective date of
16 the DECISION of May 4, 2018 by suspending Plaintiff's, (and thousands of
17 others) TCP Permit without prior notice, in April 2018.
18

19 197. On information and belief, Plaintiff claims the CPUC Does 1-20 decided the
20 best way to verify the amount of PUCTRA fees Uber would owe, would be
21 to suspend all TCP drivers they knew who had claimed Uber was their
22 primary carrier, like Plaintiff, to which they had sub-contracted, and would
23 have Uber issued IRS Form 1099's revealing the sub-carriers gross
24 passenger fares Uber had charged the riders, and establishing the total gross
25
26
27
28

1 fares of Uber's TCP conduct without a permit to compute the past due Uber
2 PUCTRA fees.
3

4 198. CPUC Does 1-20 after they suspended Plaintiff by their computers notified
5 Plaintiff by letter, approximately April 2018, that he had been suspended for
6 not paying PUCTRA fees in excess of \$456.00 dollars because Uber is not a
7 primary carrier responsible for the PUCTRA Fees. Under CPUC rules the
8 primary carrier, (the carrier who sold the transportation is the primary
9 carrier) is responsible for paying PUCTRA fees based on a percentage of the
10 gross fares of the primary carrier.
11
12

13
14 199. The trouble is the California Public Utilities Code §421, does not allow an
15 open-ended fee based on taxing the gross fares, it requires the CPUC
16 Commissioners' to establish an annual budget and divide the total budget
17 needs among the TCP Permit holders as a fixed fee by vehicle or company,
18 to provide "exactly" for the CPUC declared budget needs, not a penny more
19 or a penny less.
20
21

22 200. The open-ended percentage (1/4 or 1/3 percent) taxing of gross fares for
23 PUCTRA fees would violate State law, (CPUC §421) and result in either an
24 over or under collection of PUCTRA fees contrary to the statute.
25

26 201. Defendant Maritza Perez called Plaintiff saying if Plaintiff emailed to her
27 within the hour his private papers, his Uber issued IRS Form 1099's she
28

1 would immediately upon receipt activate Plaintiff's TCP permit. Ms. Perez
2 said if Plaintiff could not do this within the hour, she would address the
3 suspension at some later time, after receipt of the IRS Forms, but could not
4 say when she would be able to "release the suspension."
5

6
7 202. Plaintiff reasonably believed that his TCP permit, without which he could
8 not earn a living or keep his customers, was being used to coerce Plaintiff
9 into providing the IRS Forms. Plaintiff sent the IRS Forms as demanded,
10 and Ms. Perez immediately restored Plaintiff's TCP permit to active from
11 suspended.
12

13
14 203. Defendant Maritza Perez knew or should have known, that she was abusing
15 her authority, without a warrant or other legal process, violating Plaintiff's
16 Fourth (secure in his papers) and Fifth Amendment (due process) rights as
17 applicable to California by the Fourteenth Amendment by unlawfully
18 demanding Plaintiff's private papers.
19

20
21 204. CPUC Does 1-20 suspension of Plaintiff's TCP permit was for an unlawful
22 purpose, and Plaintiff who refused to pay fees he did not owe, (under either
23 calculation of fees) was unlawfully repeatedly quarterly suspended
24 thereafter, until his TCP permit was finally revoked by the Defendants
25 CPUC Does 1-20.
26
27
28

205. The unlawful suspensions and revocation of Plaintiff's permit violated Plaintiffs due process rights, deprived him of his liberty, seized his private property, and destroyed his lawful business, injuring Plaintiff.

206. The conduct of the Defendant Commissioners' and their staff, employees and agents have violated 49 CFR 350.201 and federal laws 49 U.S.C. §13506(b)(2) and 49 CFR §372.101, including the Commerce clause, causing a deprivation of Plaintiff's rights, liberty and property injuring Plaintiff.

207. The Defendant Commissioners' conduct colluded with Uber and Lyft's improper lobbying efforts to produce an illegal business enterprise unlawfully competing with Plaintiff and causing him competitive injury and loss of business.

208. Defendant Commissioners' have admitted by RESOLUTION, M-4838, issued February 5, 2019 that they had overcharged transportation providers in millions of dollars, under PUC §421 and have reduced the PUCTRA fees for 2019, with no refunds of the overcharges.

209. Additionally, the Commission has no authority under State law to "tax" the gross fares, to charge an annual fee yes, but not based on gross fares, based upon the exact amount of their declared budget needs, yet continue to assert

1 such unlawful authority, demanding reports of gross fares, by their
2 Resolution.
3

4 210. The Resolution violates federal law prohibitions taxing interstate passenger
5 transportation 49 U.S.C. §14505(4) the gross receipts derived from such
6 transportation 49 U.S.C. §14501(b) prohibiting regulations related to
7 intrastate rates, routes or services, and is preempted.
8

9 211. Plaintiff does not complain to pay fees, as legislatively enacted to the
10 amount of the CPUC budget needs, to allow the CPUC to do its job, but the
11 CPUC Commissioners' abuse of their authority and the intent and purpose of
12 the State and federal laws, violates Fourteenth Amendment rights to due
13 process, causing injury to which Plaintiff seeks equitable remedies, as set
14 forth below.
15
16
17

18 212. Plaintiff claims he has a right, under U.S. Supreme Court authority under
19 "Ex Parte Young" and "Dennis v. Higgins" decisions to have the State
20 officials stripped of their official Eleventh immunity to answer for their
21 individual misconduct.
22

23 213. Plaintiff seeks declaratory and prospective injunctive relief to cure their
24 violation of Plaintiff's rights, federal laws and disgorgement of the unlawful
25 PUCTRA fees paid, as provided for under U.S. Supreme Court authority
26
27
28

Dennis v. Higgins, 498 U.S. 439 (1991) by appropriate legal process under 42 U.S.C §1983 and §1988.

J. ANTITRUST VIOLATIONS – INCLUDE Title 49 U.S.C. §14303

[“I like a *little* competition.” – J. P. Morgan]

214. The Uber and Lyft contracts violate section 1 of the Sherman Act of 1890 which prohibits every agreement, “in restraint of trade.”

215. Uber and Lyft’s written contract, with unilateral price control over tens of thousands of independent driver tradesmen established maximum price fixing which destroys free price competition as a market force in violation of the Sherman Antitrust Act.

216. Uniform price fixing by those controlling in any substantial manner a trade or business in interstate commerce is prohibited by the Sherman law.

217. The Uber and Lyft unilateral maximum passenger fare pricing contract or agreement with the drivers, including Plaintiff is per se illegal; it is a horizontal contract agreement to eliminate competition between independent contractor drivers of Uber and Lyft, Plaintiff cannot compete with other Uber and Lyft drivers, we all must sell at the same price under the contracts. The U.S. Supreme Court says that is illegal pricing fixing by contract.

1 218. The Uber and Lyft agreements fix maximum prices for Plaintiffs services
2 and other competing drivers restraining Plaintiffs ability to sell his services,
3 offer other services not offered under the Uber and Lyft contracts, in
4 accordance with his own business judgment and consumer requests.
5

6 219. The drivers, including Plaintiff, providing transportation for Uber and Lyft
7 enter into express agreements with Uber and Lyft and are by the contract's
8 terms separate "independent contractor" individuals, some as separate legal
9 business entities, all described by written contract as "independent
10 contractor, entities."
11

12 220. The contracts under attack are agreements among hundreds of thousands of
13 competing California "independent contractor" drivers concerning the price
14 at which each will offer his own services to a substantial number of
15 consumers.
16

17 221. The Uber and Lyft drivers, like Plaintiff here provide rides to separate riders.
18 There is no joint production of the underlying transportation service.
19

20 222. This maximum pricing (rates) for passenger transportation among
21 competitors, also prohibits adding services or increasing prices to cover
22 costs or yield to profits among the competitors.
23

24 223. While the driver competitors are supposedly allowed to sell at lower pricing
25 or rates, the reality is the Uber and Lyft pricing by operation severely hinder
26
27
28

1 the ability for drivers to actually accomplish lower prices. (i.e. pricing is
2 already below drivers costs, or driver support is either not responsive or
3 overly burdensome).

4
5 224. Uber and Lyft's Maximum prices are fixed too low for the Plaintiff and
6 other drivers to furnish some essential services, (i.e. Meet and greet) of value
7 to the consumer or to furnish services and conveniences which consumers
8 desire and for which they are willing to pay.
9

10
11 225. Uber and Lyft's maximum pricing is below the Plaintiff's and other drivers
12 actual costs to the extent their pricing scheme has acquired all the attributes
13 of an arrangement fixing minimum prices.
14

15 226. These Uber and Lyft horizontal maximum pricing contracts are said to be
16 illegal per se by the U.S. Supreme Court authority, Arizona v. Maricopa
17 County Medical Society, 457 U.S. 332, 356-57 (1982).
18

19 227. Uber and Lyft could have chosen to operate legally, as Uber already does
20 with its Uber Freight "brokering" smartphone application by using a "bid
21 board" where drivers, including Plaintiff could bid and compete with other
22 drivers based on the offered "trips" origin and destination location, distance
23 of trip, traffic and passenger loads. It is after all supposed to be "prearranged
24 ground transportation, by California and federal law definitions.
25
26
27
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1 228. Uber and Lyft continue to enforce their unlawful maximum pricing method
2 using their “uniform price” to the consumer argument, in spite of the fact
3 that there is no valid legal or performance justification for violating an
4 antitrust per se rule, prohibiting maximum pricing fixing because of
5 performance arguments.
6
7

8 229. There are drivers, including Plaintiff, who at times would forgo some profits
9 for passenger revenue, (not forced by Uber and Lyft) that while unprofitable,
10 would recover the cost to return to a driver’s home base, but such driver
11 actions are not realistically achievable under the Uber and Lyft operational
12 pricing scheme.
13
14

15 230. The Uber and Lyft contracts which on their face and by operation unlawfully
16 interfere and restrict competition because of their maximum pricing and
17 limiting services, in interstate commerce which should be declared illegal
18 and void.
19

20 231. Plaintiff has been harmed by the Uber and Lyft price fixing contracts in
21 violation of Section 1 of the Sherman Antitrust Act, because the Defendants
22 price fixing erected barriers to competition; suffering loss of new customers,
23 loss of existing customers, and operational losses below his costs and profits
24 forcing plaintiff to provide below cost UberX and Lyft trips, instead of Uber
25 Black and Lyft Lux trips.
26
27
28

1 232. Plaintiff's injuries are the result of Defendants prohibited misconduct the
2 antitrust laws were designed to prevent and he seeks equitable and other
3 legal relief including treble damages for his injuries, as set forth below.
4

5 **1. RELEVANT MARKETS - Service Products**
6

7 233. The Uber and Lyft defendants participate in the "prearranged ground
8 transportation market, providing passenger transportation in the United
9 States, California and San Francisco bay area markets and submarkets
10 relevant to this complaint.
11

12 234. The defendants Uber and Lyft sell arrange and provide service to business
13 and consumer travelers in the federally regulated interstate and intrastate
14 passenger transportation as an occupation and business.
15

16 235. Defendants Uber and Lyft by their respective contract terms, contract with
17 two types of providers: (1) independent California commercially registered
18 Transportation Charter Party, "TCP" motor carriers and (2) provide under
19 Uber and Lyft's Transportation Network Company, "TNC" permit services
20 arranging and selling of passenger transportation to independent private
21 motor vehicles in the relevant California and San Francisco market.
22
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2. MARKET POWER

236. According to defendant Uber's own admission it claims by its Securities and Exchange Commission Form S-1 filing, a market power of 65 percent of the rideshare market across the United States. Defendant Lyft claims in its Form S-1 a market power of at least 35 percent of the US rideshare market.

237. Defendants Uber and Lyft deliberately by written contract and practice price passenger services and subdivide the relevant markets in substantially the same divides and with near identical pricing to achieve dual horizontal maximum pricing between their tens of thousands or more drivers in a per se illegal price fixing agreement destroying competition between drivers for the relevant market.

3. HARM TO COMPETITION

238. Each defendant Uber and Lyft's contracts with the drivers' restraints are aimed at restraining horizontal independent driver competition. Each Defendants' restraint harm competition by:

- a) harming the competitive process and disrupting the proper functioning of the price-setting mechanism of a free markets
- b) restraining drivers from encouraging or pressing each Defendant to compete over driver compensation and passenger rates for service;
- c) insulating each Defendant from aggressive competition from rival drivers with predatory maximum pricing that would otherwise encourage drivers to favor use of those other service providers;
- d) restraining drivers from promoting payment methods other than each Defendant's mandatory payment methods;

- e) causing increased prices in the form of higher surge or prime time pricing during high demand events;
- f) causing increased prices for services and reducing available services paid generally by customers;
- g) reducing output of lower-cost payment methods;
- h) stifling innovation in services that would emerge if driver competitors were forced to compete for passenger business at the point of sale; and
- i) denying consumers information about the relative costs of each Defendant's General services usage compared to other service usage that would cause more consumers to choose lower-cost or additional services and payment methods.

Violations of Federal Law 49 U.S.C. §14303

239. Defendants' Uber and Lyft's core business enterprise sells and arranges transportation via private motor vehicles in all 48 states, it unlawfully "contracts to operate the property of another," the drivers private and commercial vehicles, 49 U.S.C. §14303. This "core business model" is not only specifically federally prohibited by 49 CFR §372.101, regulation, it violates 49 U.S.C. §14506(2) and Federal and State antitrust and transportation laws.

240. Federal transportation law (49 U.S.C. §14303) specifically requires, Uber and Lyft, to secure APPROVAL from the Surface Transportation Board,

1 “STB”, in order to, “contract to operate the property of another carrier, like
2 Plaintiff.
3

4 241. Uber and Lyft have never “registered for any federal *motor carrier* or *broker*
5 authority. Uber and Lyft have never applied for or secured Board approval
6 to contract to operate Plaintiff’s, (or any other individuals or companies)
7 vehicle property. Both have contracted and are operating other carriers
8 property for their passenger transportation business.
9
10

11 242. The Uber and Lyft business model violates antitrust laws because it exerts
12 prohibited price fixing from their predatory *maximum* pricing on both of its
13 consumers – the drivers and passengers.
14

15 243. Uber and Lyft’s unilaterally constructed contracts with Plaintiff and other
16 “independent contractor” driver tradesmen competitors sets maximum prices
17 on all competing drivers for the passenger fares and sets the maximum
18 compensation to the drivers, which are *per se* illegal horizontal price fixing
19 contracts under U.S. antitrust law and U. S. Supreme Court authority under
20 Arizona v. Maricopa County Medical Society, 457 U.S. 332 (1982).
21
22

23 244. Uber and Lyft, national brokers, price and divide the Plaintiff’s competitive
24 marketplace in essentially identical price rate schedules and their geographic
25 subdivisions the San Francisco market into nearly identical submarket areas,
26 which are all part of Plaintiff’s inherently local marketplace.
27
28

1 245. In the San Francisco Bay Area market, Uber and Lyft in equal lock step
2 price identically including dividing the market geographically.
3

4 246. They divide and price their *submarket* of the East Bay Counties into lower
5 rates versus the higher priced *submarket* of the northern half of the San
6 Francisco Bay Area peninsula. To the South is the Silicon Valley submarket
7 is priced in between the East Bay and San Francisco submarkets even
8 though it is in the overall Plaintiff's San Francisco Bay Area Market. (SEE:
9 Lyft's November 2018 Driver addendum, for example)
10

11 247. The costs to provide the transportation is the same in each submarket, both
12 companies discriminate by gouging the submarket San Francisco peninsula
13 consumers and discounting to the submarket East Bay consumers. Plaintiff
14 must comply with the discrimination under his respective contracts with
15 each company.
16

17 248. The Sacramento district market is priced below all the San Francisco Bay
18 Area markets by Uber and Lyft, but again the costs are the same to provide
19 the service. The discrimination against the consumers and the reduction of
20 competition unfairly destroys a competitive marketplace.
21

22 249. The unlawful passenger transportation operations of Uber and Lyft, with
23 their combined marketplace discriminations does explain why their drivers
24
25
26
27
28

1 run from their hometown Sacramento marketplace into Plaintiff's San
2 Francisco Bay Area Marketplace.

3
4 250. The Uber and Lyft's price discrimination has far reaching affects. Drivers
5 who live in Los Angeles commute to the Plaintiff's San Francisco Bay Area
6 Marketplace to take advantage of the price discrimination.
7

8 251. It is beyond belief, but these Los Angeles and Sacramento drivers live out of
9 their cars, sharing rental storage lockers for their belongings to keep trunk
10 space free, use cheap "24 hours fitness" memberships to shower once a day,
11 to work 7 to 10 days before returning home for a few days' rest.
12

13
14 252. Uber and Lyft's economic price discrimination reduces available consumers
15 by thousands to Plaintiff's legally operated passenger transportation business.
16

17 253. Plaintiff is injured, as a competitor against Uber, Lyft and other
18 "independent contractor" driver providers contracting with Uber and Lyft, in
19 that he cannot charge reasonable or higher prices or offer other services
20 outside Uber and Lyft's limited offerings. Services and prices he seeks to
21 supply, and passengers' request. (i.e., meets and greet service, baggage
22 assistance from baggage claim)
23
24

25 254. Plaintiff cannot compete legally against the other Uber and Lyft TNC drivers
26 or expand his "independent" business because of the barriers to anyone's
27 competition which Uber and Lyft have erected. Their deadly and illegal
28

1 TNC business model combined with its predatory maximum pricing driver
2 contracts unlawfully fixes pricing destroying the competitive marketplace.
3

4 255. By way of example Ford and Toyota cannot have a contract where they
5 discriminate and sell their vehicles to different “independent” retail dealers
6 across the United States at different prices. (Shipping charges are not vehicle
7 prices).
8

9 256. Uber and Lyft use arbitrary rates and capricious price discrimination all
10 across the San Francisco Bay Area Marketplace where Plaintiff provides
11 passenger transportation.
12

13 257. For all appearances the Uber and Lyft, rates and pricing appear designed to
14 take advantage of the income levels of the consumers living in the San
15 Francisco submarkets Uber and Lyft have created. There is no material cost
16 variance for Plaintiff to provide passenger transportation anywhere in the
17 State of California.
18

19 258. Uber and Lyft do not by their contracts have to consider Plaintiff’s costs to
20 provide transportation and they arbitrarily and unilaterally set Plaintiff’s
21 compensation as their cost, which could be but are not the same across the
22 Plaintiff’s marketplace, the San Francisco Bay Area.
23

24 259. Uber and Lyft, like the Maricopa Medical Society doctors, cannot
25 unilaterally set the maximum prices of Plaintiff’s and other Drivers
26
27
28

1 passenger transportation services to the consuming public without violating
2 the Sherman Act section 1 and U.S. Supreme Court authority under Arizona
3 v. Maricopa Medical Society, 457 U.S. 332 (1982)
4

5 260. The only way for Plaintiff or others to compete is to operate illegally.

6 Violate federal transportation and antitrust laws and stiff the driver
7 employees of wages and expenses under California Labor laws. The price
8 fixing restraint combined with civil penalties, to Plaintiff and other
9 independent driver tradesmen are severe (in excess of \$25,000.00) are worse
10 than the anti-competitive financial losses and not worth the risk.
11
12

13 261. Plaintiff cannot rely on Defendant State government officials' appearance of
14 fear of the loss of the Uber and Lyft unlawful TNC permit revenue to look
15 the other way so Plaintiff must compete with Uber and Lyft's illegal
16 business model.
17
18

19 262. Operating illegally "as a motor carrier," under federal transportation laws
20 subjects the Plaintiff driver, not Uber and Lyft, to huge federal civil fines of
21 more than 25,000.00 dollars per violation, 49 U.S.C. §14901(c), and
22 imprisonment if Plaintiff doesn't pay which defeats the entire purpose of
23 engaging in business. Unless of course you have access to billions in private
24 Venture Capital, that can be replenished by Public stock investors.
25
26
27
28

1 **K. UBER AND LYFT “FEE COMMISSIONS” ARE UNLAWFUL**

2
3 **UNJUST ENRICHMENT**

4 263. Uber and Lyft have always sold their unilaterally controlled cost of driver
5 provided transportation to passengers with a markup, for a gross profit.
6

7 264. The Uber and Lyft contracts take a “fee commission” (separate from Uber
8 booking and Lyft service fees) based on the Plaintiff’s passenger fares at
9 amounts they set, for passenger transportation they had and have no legal
10 authority to provide.
11

12 265. Under California law, unlicensed contractors, doctors without State licensing
13 are not entitled to compensation for their unauthorized services lest they be
14 rewarded for their unregulated conduct.
15
16

17 266. Uber and Lyft have no legal authority under State or federal transportation
18 authorization to arrange or sell any transportation of Plaintiff. The fares
19 Uber and Lyft passengers paid belong to the Plaintiff, as the provider of the
20 service and the terms of the Uber and Lyft contracts.
21

22 267. Uber and Lyft deducted “fee commissions” they had no legal right to take
23 from his fares, and Plaintiff seeks disgorgement of the unlawful fee
24 commissions.
25
26
27
28

1 268. Plaintiff claims Uber and Lyft are not entitled to the “service fee
2 commissions” because it would unjustly enrich them them for unlawfully
3 selling and arranging transportation.
4

5 **The Uber and Lyft Contracts are Unconscionable**

6
7 269. The Uber and Lyft contracts provide zero provision to insure the drivers can
8 cover their actual costs or a return on Plaintiff and other drivers’ capital.

9
10 270. The Uber and Lyft contracts are one-sided in that Uber and Lyft never lose
11 on a sale. The always take a fee commission from transportation services
12 performed in which they have no obligation to cover the cost to provide it.
13

14 271. The following example describes Uber and Lyft’s contract misrepresentation
15 conduct:

- 16 a) It would be the same as if every Ford Dealer (Uber and Lyft)
17 decided to join together and by their joint contract, tell Ford (the
18 drivers) from now on we are only going to pay you 10K per
19 vehicle even though we know your production cost is 30K. Yeah,
20 we know you built your inventory (bought your car) last month to
21 insure supply, but if you sell them to me today for 10K, from now
22 on, the payment is going to be lower, but don’t worry, you’ll sell
23 lots more cars and make it up on volume, we promise!
24
25
26
27
28

1 272. The fact is Uber and Lyft by written contract claim the right to unilaterally
2 set the driver compensation, and do set the Plaintiff's compensation without
3 any consideration for the Plaintiff's actual costs of the Plaintiff to provide
4 his legal passenger transportation.
5

6 273. Uber and Lyft knew or should have known that Plaintiff's costs to provide
7 passenger transportation are inelastic, like Uber's booking fee and Lyft's
8 service fee.
9

10 274. However, Uber and Lyft's unlawful "fee commissions" are elastic as they
11 have both proved by their constant unilateral changes, of their gross profit
12 fee commissions over the time Plaintiff has provided the passenger
13 transportation under both their respective contracts.
14

15 275. The fact Uber and Lyft make discount offers to passengers below their
16 commission rate up to and including the entire passenger fare - does not
17 change the unconscionable effect of the financial loss the Uber and Lyft
18 contracts impose on Plaintiff, paying less than Plaintiff's actual cost (and
19 other drivers') for passenger transportation services rendered.
20
21
22

23
24 **Inefficient Overhead and Physics Explain the Massive Losses**

25 276. For all the Uber and Lyft technology efficiency claims, they have higher
26 overhead costs than most any established passenger transportation provider.
27
28

277. For anyone paying attention, Uber closed its Uber Xchange Leasing business because even at its usurious rates, (according to Federal Trade Commission findings,) charged to the Uber leasing drivers, Uber lost over \$9000.00 a car on a reported 40,000 cars for a 531 million dollar loss, in about 14 months of operation.

278. These cars had a human Uber driver caretaker, AI cars will not have this benefit, and the Uber Xchange vehicles collapsed in value in great part because it's not the vehicle care as much, as the abusive commercial use, at 300 to more than 500 miles a day and severely increased repair and maintenance for the vehicles which render the severe losses Uber incurred. Uber and Lyft's claim that Artificial Intelligence cars will be cheaper to operate than with human drivers will not solve this major physics problem.

Artificial Intelligence Cannot Restore Commercial Wear on Machines

279. It is Uber and Lyft's own lack of discipline and inefficient overhead which has caused their massive losses. Their constant pursuit and ultimate goal of growing riders and drivers at an "any cost" metric, attracts investor capital, setting up an apparent self-inflicted irreversible *Ponzi scheme* trap, for Uber, Lyft and their investors.

L. UBER / LYFT UNCONCIONABLE DRIVER CONTRACTS –

280. Uber and Lyft do not own the labor (employ) or the vehicles they sell for their transportation business.

281. Plaintiff provides transportation services that are Uber and Lyft's usual course of business, without Plaintiff's labor and vehicle, Uber and Lyft would not be able to provide the transportation they arrange and sell.

282. Uber and Lyft control every aspect of Plaintiff's conduct, the economic factors; compensation rates, passenger fares, quantity of and availability of passengers; they actively supervise Plaintiff's conduct and behavior using algorithms and passenger ratings, leaving Plaintiff in false control of one thing, the number of hours he works.

283. Plaintiff's number and choice of hours is controlled by Uber and Lyft's unilateral price controls and the actual flow of business. (ie. The flow of business at 3:30am Wednesday morning is dead slow compared to 2:00am Friday night getting riders home from the bar.)

284. Uber and Lyft's unilateral prices and compensation rates force a minimum number of work hours upon Plaintiff (and other drivers). The breakdown of the annual, monthly and weekly costs to produce a vehicle and labor, are further broken down to a daily cost.

1 285. As an example, Plaintiff's daily costs to provide a Mercedes Benz, R-Class
2 luxury SUV are approximately \$93.00 dollars a day 7 days a week, and
3 \$130.00 dollars for a 5 day week. Plaintiff must recover the daily costs
4 before he can earn labor wages or overtime.
5

6 286. The Plaintiff (and other misclassified "independent contractor" drivers)
7 owns the labor and the vehicles used to provide Uber and Lyft's
8 transportation services. The Plaintiff (and other drivers) is, by contract,
9 improperly labeled as an independent contractor, deprived of Workmen's
10 Compensation, (IWC Wage Order No.9) and minimum wages, overtime,
11 meal and rest break pay which Uber and Lyft have looted from Plaintiff for
12 the actual value of his labor.
13
14
15

16 287. Uber and Lyft have violated California Labor Code §2802 in failing to
17 reimburse Plaintiff's vehicle costs and operating expenses.
18

19 288. Uber and Lyft have unfairly taken Plaintiffs vehicle, operating expenses and
20 labor without compensation under California Labor Code §2802.
21

22 289. Plaintiff has suffered a loss of property and labor because of Uber and Lyft's
23 violation of the California Labor Code §2802.
24

25 290. Uber and Lyft are apparently allowed, unlike TCP Permittee's like Plaintiff,
26 by Defendant Commissioners' to avoid California's well-established
27 Industrial Welfare Commission Wage Order No. 9 which requires drivers
28

1 working, providing transportation to be granted, “employee status,”
2 including minimum wage, overtime, and Workmen’s Compensation, as the
3 labor law requires.
4

5 291. Plaintiff, as a TCP Permittee providing the same passenger transportation, as
6 Defendants Uber and Lyft was required by the Defendant Commissioners’
7 and Does 1-20, to execute a declaration under oath that he would comply
8 with Wage Order No. 9, providing employee status and Workmen’s
9 Compensation to anyone he engaged as a driver for Plaintiff’s passenger
10 transportation service.
11
12

13 292. Defendant Commissioners’ and CPUC Does 1-20, are either unequally
14 applying their mandate to sign a declaration under oath for Plaintiff to
15 comply with California’s Industrial Commission “IWC” Wage Order No. 9,
16 or deliberately failing to enforce the same requirement upon Uber and Lyft,
17 contrary to legislative intent.
18
19

20 293. For the Commission to do both is an unequal application of using
21 “Declarations” to insure Plaintiff’s compliance with California’s Labor Code
22 §§3351 and 3352, under Assembly Bill No. 2883 (revised exemptions) while
23 failing to subject Uber and Lyft to the same compliance.
24
25

26 294. Plaintiff’s is injured in his right to equal application of the laws and seek
27 declaratory and injunctive relief for his injury, as set forth below.
28

1 295. If Plaintiff must comply under oath, with IWC Wage Order No. 9, before the
2 California Public Utilities Commission will permit Plaintiff to operate, then
3
4 Uber and Lyft should be also required to comply under oath with
5 California's Labor laws, BEFORE they can continue to operate.

6
7 296. Defendants Uber and Uber Does 1-50, Lyft and Lyft Does 1-50 do not pay
8 for and provide Plaintiff with Workmen's Compensation insurance as
9 required by California law and are doing at least one of the following:
10

- 11 a) Committing perjury before the California Public Utilities
12 Commission
- 13 b) Flagrantly violating California's Labor Codes §§3351 and 3352
14 requiring Uber and Lyft to maintain worker's compensation for
15 their employee drivers, including Plaintiff
- 16 c) Operating a transportation business in violation of California's
17 Labor codes.

18
19 297. Plaintiff is a transportation worker for Uber and Lyft, in a significantly high
20 risk occupation providing passenger transportation, and has been deprived of
21 the Worker's Compensation Insurance that Defendants Uber and Lyft are
22 required by law to provide.
23

24
25 298. Under Uber and Lyft's unilateral predatory maximum pricing scheme they
26 have continued since at least 2015 to unilaterally lower the maximum rate
27 paid to the drivers' below the actual labor and vehicle costs, while increasing
28

passenger fares to the riders, this expansion between driver compensation and passenger fare pricing, the spread, becomes Uber and Lyft's profit.

299. Uber and Lyft have continued extracting, larger and larger price expansions to increase their total percentages of take in their service fee commissions, reducing Plaintiff and other drivers' compensation into indentured servitude levels of financial advantage.

300. Upon information and belief Uber initiated a cut to Plaintiff's (and other TNC drivers) compensation and passenger fares, in 2015, to predatory levels in front of one of its financing rounds. The purpose was to show rapid growth in passengers serviced and frequency of use, as well as a growth in drivers with a 500 million dollar loss of drivers earning and Uber savings in their costs, increasing their "metric" to entice private venture capital.

301. Upon information and belief, Uber AGAIN, in 2016, cut driver compensation more severely, to ultra-predatory levels, reducing driver earnings by at least 1 billion dollars, and reducing passenger fares, increasing riders and participation faster than non-predatory pricing, BUT improving their "metric" of riders and drivers and total market size, in front of a financing round to attract billions in venture capital.

302. All drivers like Plaintiff have made vehicle expenditure choices and financial commitments (financing vehicles, etc.) based upon Uber and Lyft's

1 representations, which are unilaterally changed with no concern for the
2 Plaintiff driver's costs, investment or necessary financial expense
3 obligations.
4

5 303. Uber and Lyft make no adjustments temporary or permanent for the radical
6 rise in gas prices experienced in Plaintiff's San Francisco Bay Area Market,
7 between the California increasing gasoline taxes by 20 to 40 cents a gallon
8 and the market price exponentially increasing Plaintiff has suffered
9 unnecessary financial harm due to Uber and Lyft's unfair contract terms.
10

11 304. Since at least 2013, Uber and Lyft have had no legal authority, and continue
12 to have no legal authority, under State and Federal transportation law, to
13 operate or charge commissions or broker fees for their illegal transportation
14 business.
15

16 305. Uber and Lyft continue to sell what they do not own, not below just their
17 total cost, but below the owners of the labor and vehicles, of the Plaintiff and
18 other drivers actual cost.
19

20 306. This creates a predatory pricing barrier to new market participants and forces
21 out established legal operators, like Plaintiff. This predatory pricing fixing
22 is why the antitrust laws were put into place; to stop the price gouging of
23 driver or passenger consumers either up or down the economic scales, and
24 prevent the killing of legal competition.
25
26
27
28

1 307. California's Unfair Practices Act specifically prohibits "loss leader" pricing,
2 that Uber and Lyft practice.

3
4 308. Plaintiff is injured by this scheme, was physically abused by unknown
5 passengers, pushed to insolvency, and unlawfully forced out of his TCP
6 Permit passenger transportation business, by the combined treachery
7 between the Defendant State Officials and Uber and Lyft's unlawful conduct.
8

9 309. Some drivers have been driven to bankruptcy and some suffer the worst
10 finality - total surrender - suicide!
11
12
13

14 **M. THE ATTORNEYS – Government – and Private**

15 310. There are Government Official attorneys, Plaintiff attorneys, Defense
16 Attorneys, all kinds of attorneys involved around the United States in *legal*
17 *battles* on all sides of Uber and Lyft's conduct.
18

19 311. The media, Courthouse News, reports over 430 suits around the country.
20

21 312. All of the attorneys have a professional obligation to, at a minimum, (1)
22 investigate the facts and the law, BEFORE formulating strategies and (2) to
23 always before a Court of Law, act with complete honesty and candor in their
24 actions.
25
26
27
28

1 313. If not for the questionable utilization of their professional talents, to avoid
2 the truth, omit evidence and law, to correct their representations or assist
3 client misconduct, there would have been fewer people dead, raped or
4 harmed and a safer passenger transportation flow throughout the United
5 States.
6
7

8 314. Mr. Theodore Boutrous, and the Gibson Dunn Law Firm, representing Uber
9 in the O'Connor case, especially, given his arguments in a related arbitration
10 of case before the U.S. Supreme Court, attempting to claim that a "contract
11 of employment" does not include "independent contractors" which argument,
12 even this layman Plaintiff thinks is ridiculous. BUT, so did the U.S.
13 Supreme Court in its 8-0 decision. New Prime v. Oliveira, 585 U.S.
14 ____ (January 2019) (Employees and independent contractors are exempt
15 from the FAA under section 1.)
16
17
18

19 315. Mr. Boutrous and his firm Gibson Dunn, in spite of an 8-0 defeat continued
20 to keep their Motion to Compel Arbitration of the Uber drivers, pending, as
21 of May 20, 2019, before the District Court, of Northern District of California.
22
23

24 316. Mr. Boutrous and his firm know or should know that their Motion to
25 Compel Arbitration, in the O'Connor v. Uber case is without merit and
26 should have withdrawn it upon the U.S. Supreme Court decision defeat.
27
28

1 317. Certainly they need to earn a living, BUT some need to be held to account
2 when their conduct results in wrongful intended and unintended costs to the
3 life, liberty and property of their fellow citizens, including Plaintiff.
4

5 **1. Malpractice by Deliberate Omission and Lack of**
6 **Candor**
7

8 318. The Defendant attorneys, representing the Plaintiff, as an unnamed Plaintiff
9 have failed to use the ordinary skill and care in representing Plaintiff (and
10 other class members).
11

12 319. Attorneys have a duty to “investigate the facts and the law” before and after
13 the filing of the complaints and other pleadings. They breached that duty, to
14 Plaintiff and were negligent in not raising several substantial issues, not least
15 of which is Plaintiff’s (and other class action driver members) federal
16 statutory right, as workers engaged in interstate commerce to exemption
17 from arbitration under the Federal Arbitration Act (“FAA”), section 1.
18
19
20

21 320. The indisputable, well-known fact is that both Uber and Lyft have and are
22 operating in all 48 contiguous States and have no limits to the distance a
23 passenger may travel on their respective smart phone applications.
24

25 321. BY FEDERAL LAW, there can be no limit on the routes (distance) where
26 the drivers can travel to or from, and California’s transportation permits
27
28

1 have no set any limit either. This requires no legal discovery process. It begs
2 credibility that the Defendant Attorneys had no clue the Uber and Lyft
3 drivers are driving passengers across state lines and are engaged in interstate
4 transportation, the media reports of driver activity wipeout such excuses.
5

6
7 322. The plain language of the federal law includes the regulation of ;
8 “passengers, property, or both, are transported by motor carrier,” under 49
9 U.S.C. §13501, General jurisdiction.
10

11 323. The named attorneys knew or should have known that their failure, their
12 negligence, to raise the “driver exemption” from arbitration in their
13 pleadings before the courts could or would harm Plaintiff, and the other
14 drivers, they represent subjecting them to a legitimate malpractice claim by
15 Plaintiff.
16

17
18 324. That such a failure or negligence would and did result in adverse decisions,
19 including significant court system delays fighting meritless Motions to
20 Compel Arbitration. Thus depriving Plaintiff (and other drivers) of his
21 substantial statutory rights and result in further financial hardships and
22 physical and emotional harm. Plaintiff suffered injury because of the
23 attorneys’ failure to exercise ordinary care.
24

25
26 325. The named attorneys raised “exemption” under section 1 of the FAA, in no
27 less than 4 other (Caviar, Doordash; Grubhub; Postmates, Jan-Pro) current
28

1 and former cases they are prosecuting in State, federal district and appellate
2 courts.

3
4 326. Amazingly none of those other businesses fall within federal transportation
5 jurisdiction nor are they federally regulated. This failure occurred in spite of
6 email and telephone communications between Plaintiff Mendel and lead
7 Attorney Shannon Liss-Riordan, urging her to raise the issue, she refused.

8
9 327. Given Attorney Liss-Riordan's and her fellow Defendant attorneys actions
10 and conduct in their other cases; this refusal was irrational and below the
11 applicable standard of care. It might be that a win for the drivers means that
12 Uber or Lyft pays the attorney's fees, but does that mean they need to do the
13 minimum required for their clients – regardless of their self-interest – in the
14 millions of dollars.
15
16
17

18 328. There are apparently only two conceivable reasons the defendant attorneys
19 irrational failure to assert the readily available evidence or raise and defend
20 the statutory rights of their client Plaintiff (and other drivers): (1) the illegal
21 purpose of the contracts of Uber and Lyft would be discovered by the courts
22 and declared void requiring some form of dismissal (their quantum meruit
23 count was dismissed at least once in the O'Connor case because of the
24 omission) or (2) their main concern, "their earnings - their fees" were
25 improperly placed above the needs of their clients.
26
27
28

1 329. The Defendant attorneys misplaced priorities are not conjecture by the
2 Plaintiff, because it is a fact these attorneys secured a 27 million dollar
3 settlement with LYFT previously which regardless of the money
4 compensation for the drivers, allows LYFT to continue its federally
5 prohibited and illegal business activity with the essentially the STAMP of a
6 federal court approval of the LYFT continued illegal business enterprise.
7

8
9 330. The only thing worse is they are about to do it again. Their pending
10 approved settlement seeks to secure the same improper relief for the Plaintiff
11 and other drivers in the O'Connor case, while extracting the full or nearly
12 full value of their labor, costs and fees, while leaving the drivers, including
13 Plaintiff not only woefully short of financial compensation for their losses
14 and exemption rights, but will have a federal court STAMP of approval over
15 the illegal Uber business model continuing their abuse of the drivers and
16 Plaintiff.
17

18
19 331. Even IF Plaintiff seeks to work as a driver and have a passenger
20 transportation business some other way, the antitrust violations of UBER
21 and LYFT and their dominant market control through their illegal horizontal
22 price fixing contracts have created such formidable barriers to free market
23 price discovery and illegal their competition, Plaintiff would have to operate
24 illegally and risk severe fines over \$25,000.00 for each violation and
25
26
27
28

1 imprisonment on top of the financial business and labor losses he would
2 sustain in even trying to compete.

3
4 332. This failure, by the Defendant Attorneys, to exercise ordinary care, for their
5 client first, resulted in several major adverse outcomes injuring Plaintiff and
6 other drivers.

7
8 333. One decision was in the Ninth Circuit, Mohamed v. Uber, 848 F.3d 1201,
9 (9th 2016) (claiming the drivers are subject to arbitration). Another
10 egregious result was a settlement with Lyft, for well less than fair value that
11 also secured *tacit* federal district court approval of Lyft's continued illegal
12 sales and arranging passenger transportation, and its continued forcing of
13 arbitration on their contracted drivers, who are by conduct and law exempt.
14

15
16 334. This occurred, in significant part, because the "Courts" lacked the
17 undisputed factual evidence of drivers crossing state lines, and "engaged in
18 commerce," which these attorneys had a duty to present. (Uber's attorneys
19 also mislead the Courts)
20

21
22 335. The result is no federal district or the Ninth Circuit Appellate Panel, has
23 complied with Ninth Circuit, and now U.S. Supreme Court authority to
24 verify their jurisdiction, under 9 U. S. C. §1., first before compelling
25 arbitration. Federal courts are of limited jurisdiction and have limited power
26 to compel arbitration.
27
28

336. The *Mohamed* appellate court panel improperly implied that the Uber drivers are subject to arbitration in the related *O'Connor v. Uber* class action, under the Ninth Circuit, *Mohamed v Uber* decision cited above. This miscarriage of justice has injured Plaintiff. The *Mohamed* panel decision is in excess the Ninth Circuit's jurisdiction, is voidable as a matter of law as an act beyond the jurisdiction of the courts. Plaintiff will seek to have the arbitration contract declared unlawful and void.

N. THE CONSEQUENCES...

337. As a result of the Defendant Government Officials, failure to exercise their lawfully mandated duties, their abuse of power, unlawfully taking millions of dollars in permit fees and complicity with Uber and Lyft's illegal enterprise, the consumers, the drivers, including Plaintiff, have paid a terribly steep price for this illegal transportation; some with their very lives!

338. As of the filing of this complaint, Uber and Lyft have swindled the investing public, failing to disclose the illegality of their business model in their S-1 filing, by issuing stock in the billions of dollars for a business model, they claim has trillions of dollars of potential, that has never achieved a profit, is easily and arguably less efficient than the competition they displaced and since 1942, is illegal as hell!

THE HEART OF THE COMPLAINT

Driver Contracts – DECISIONS – FED-STATE Agreements

339. The Plaintiff has attached the following documents: Defendants Uber and Lyft's, UBER Technologies, Inc., UBER USA, LLC, RASIER-CA, LLC, LYFT, INC., *Driver Contracts*⁵ and CPUC Defendants *DECISION[S]* and the Defendant Federal Officials "Federal Register" re: California's agreement to comply with federal transportation laws for receipt of MCSAP grant funding, as included herein as though full set forth.

II. THE PARTIES

THE PLAINTIFF

340. Plaintiff, S. Patrick Mendel is an adult resident of San Leandro, California.

PLAINTIFF'S STANDING

341. Plaintiff claims Article III standing, to (1) enforce his Constitutional Rights, to (2) enforce his federal statutory rights and to (3) enforce his California Constitutional rights, (4) to enforce and remedy defendants anticompetitive price fixing conduct under the Sherman Act §1, for defendants violations of his respective rights, as alleged and to secure appropriate remedies for

⁵ The term "contracts" includes the respective Defendants contract terminology regardless of the terms used such as "agreements" or "terms of service" or "addendums" or "amendments" as inclusive of their descriptions.

1 the/his injuries, as set forth throughout his complaint. *Davis v. Passman*, 442
2 U.S. 228 (1979).

3
4 342. Plaintiff, himself complies with 49 U.S.C. §14501(d)(1)(B) having
5 commercial passenger vehicle registration and California TCP passenger
6 authority, and is exempt under 49 U.S.C. §§13506(a)(2) and 13506(b)(1)(B)
7 from federal registration under 49 U.S.C. §14501(d)(1)(A) because his
8 independent business and private clientele remained inherently local, and are
9 not related to Uber and Lyft's misrepresented unlawful and unauthorized
10 federally non-exempt passenger operations.

11
12
13
14 343. Plaintiff's standing is similarly situated to the New York licensed livery
15 drivers, having no federal authorities, who had standing to challenge New
16 Jersey's interference with interstate transportation. 49 U.S.C. § *Black Car*
17 *Assistance Corporation v. New Jersey*, 351 F.Supp.2d 284 (2004).

18
19 344. Plaintiff Mendel has worked as an Uber Driver, since November 2014 and
20 with Lyft as a driver since 2015.

21
22 345. Plaintiff Mendel has provided locally exempt passenger transportation for
23 his private TCP permit clients.

24
25 346. Plaintiff Mendel, under contract to Uber and Lyft, has provided passenger
26 transportation to Uber and Lyft passengers, as assigned by Uber and Lyft.
27
28

1 347. Plaintiff provided federally exempt and non-exempt interstate passenger
2 transportation throughout California and across State lines into Nevada, all
3 as assigned and directed by Uber and Lyft.
4

5 348. Plaintiff has complied with Uber and Lyft passenger requests to provide and
6 complete Uber and Lyft assigned, federally regulated and non-regulated
7 interstate passenger transportation throughout California and across State
8 lines.
9

10
11 349. Plaintiff Mendel has worked as a Lyft driver since approximately March
12 2015, with a 4.9 plus rating completing over 2600 trips.
13

14
15 350. Plaintiff Mendel has worked as an UberX driver since at least 2014, for 4.5
16 years with over 2200 trips, and as an Uber Black driver since 2015 for 4
17 years, with a 4.9 plus average rating and completed over 4500 trips, both as
18 peer-to-peer UberX and Uber Black and Uber SUV accounts
19

20
21 351. Plaintiff Mendel last drove as an Uber Black driver, March 26, 2018, where
22 he spent 18.56 hours online and had 2 trips for gross earnings of \$73.94
23 dollars.
24

25 352. Plaintiff Mendel has been injured by the denial of minimum wages, overtime,
26 meal and rest breaks, reimbursement of expenses, charged unlawful
27
28

1 commissions, and other misconduct as a direct and foreseeable result of the
2 defendants Uber and Lyft's conduct, as set forth below.

3
4 353. Plaintiff Mendel seeks equitable, compensatory and punitive relief for his
5 injuries and damages as more fully set forth below.

6
7 **THE DEFENDANTS**

8 **U.S DEPARTMENT OF TRANSPORTATION - Federal Officials**

9
10 354. Defendant ELAINE CHAO, U. S. Secretary of Transportation, has her
11 primary office at 1200 New Jersey Ave. SE, Washington, DC 20590. is sued
12 in her official capacity, for failing to acknowledge and address Plaintiff's
13 valid complaints of violations of federal transportation laws by the State of
14 California and the California Public Utilities Commission, Uber and Lyft.

15
16
17 355. Under federal law the U.S. Secretary of Transportation has jurisdiction over
18 the transportation conduct of Uber and Lyft under 49 U.S.C. §§13101, the
19 transportation policy of the United States and 13506(b)(2) as well as, 49
20 U.S.C. §14501, Federal Authority Over Intrastate Transportation. The
21 Secretary has jurisdiction over the violations by the State of California and
22 the California Public Utilities Commission, Uber and Lyft, for violating
23 federal transportation laws and operating regulations, in violation of the
24 Supremacy and Commerce clause of the United States Constitution.
25
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1 356. Her failure to properly administer and train her subordinates to insure the
2 safety of Plaintiff and the American public in carrying out the policies,
3 function and purpose of the Department of Transportation, Federal Motor
4 Carrier Safety Administration division, resulting in Plaintiff sustaining
5 injury.
6
7

8 a) As a direct and foreseeable result of the failure of defendant
9 ELAINE CHAO, U. S. Secretary of Transportation to carry out her
10 official administrative duties insuring her lower department staff
11 carry out the administration and enforcement of federal
12 transportation laws, Plaintiff has been injured and seeks
13 declaratory and prospective relief as to this defendant;
14
15
16
17

18 357. Defendant RAYMOND MARTINEZ, Administrator, Federal Motor Carrier
19 Safety Administration, is sued in his official capacity for failing to comply
20 with federal regulations 49 CFR §1.87, his delegated authority requiring him
21 to carry out his duties under law. Mr. Martinez failed to act or acknowledge
22 and address Plaintiff's valid complaints made to his subordinate, Loretta
23 Bitner, Chief of Enforcement of the Federal Motor Carrier Safety
24 Administration violations by the State of California and the California
25 Public Utilities Commission, Uber and Lyft, for violating federal
26
27
28

1 transportation laws and operating regulations, in violation of the Supremacy
2 and Commerce clause of the United States Constitution. and to properly
3 administer and train his subordinate, Loretta Bitner, who failed to perform
4 her official duty, to insure the safety of Plaintiff and the American public,
5 and investigate and enforce the violations of federal transportation laws
6 reported to her by Plaintiff of Uber and Lyft, resulting in Plaintiff sustaining
7 injury and Plaintiff seeks declaratory and prospective relief as to this
8 defendant, as set forth below.
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14 358. Defendant LORETTA BITNER, Chief, Office of Enforcement and
15 Compliance, Federal Motor Carrier Safety Administration, is sued in her
16 official capacity for failing to comply with federal regulations 49 CFR §1.87,
17 her delegated authority requiring her to carry out her duties under law. For
18 failing to investigate Plaintiffs complaint of Uber and Lyft violations of
19 federal transportation laws, which she acknowledged and knew or should
20 have known such violations would lead to serious safety and transportation
21 law violations, physical and illegal competitive harm to Plaintiff and the
22 American consumers and Plaintiff seeks declaratory and prospective relief as
23 to this defendant, as set forth below.
24
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1 359. Plaintiff seeks equitable declaratory and prospective relief against the all
2 Defendant federal officials for their conduct as set forth below.
3

4 **CALIFORNIA EXECUTIVE BRANCH - State Officials**

5 360. Defendant GAVIN NEWSOM, the Governor is the chief executive officer of
6 the State of California. It is his responsibility to ensure that the laws of the
7 State are properly administered and enforced. He is sued in his official
8 capacity. because California Public Utilities Codes §§5430-5450 provides
9 for arranging and selling passenger transportation to private vehicles as an
10 occupation or business, conduct which is prohibited under federal law, and
11 usurps the Supremacy clause of the U.S. Constitution, and Plaintiff seeks to
12 have the codes be declared unconstitutional as preempted
13
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17 361. Defendant XAVIER BECERRA is the Attorney General of California. He is
18 the chief law enforcement officer of California. Defendant Becerra is
19 charged by Article V, Section 13 of the California Constitution with the duty
20 to see that the laws of California are uniformly and adequately enforced. He
21 is sued because California Public Utilities Codes §§5430-5450 provides for
22 arranging and selling passenger transportation to private vehicles as an
23 occupation or business, conduct which is prohibited under federal law, and
24 usurps the Supremacy clause of the U.S. Constitution, and Plaintiff seeks to
25
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1 have the codes be declared unconstitutional as preempted. He is sued in his
2 official capacity.
3

4 **CALIFORNIA PUBLIC UTILITIES COMMISSION -**

5 362. The Defendant Commissioners' as listed below are all members of the
6 California Public Utilities Commission, "CPUC" and upon information and
7 belief work in the city of San Francisco, located at 5050 Van Ness Street,
8 San Francisco, CA.
9

10
11 363. The Defendant Michael Picker, President, Commissioner, California Public
12 Utilities Commission, and sued in his individual and Official Capacity.
13

14 364. The Defendant Carla J. Peterman, Commissioner, California Public Utilities
15 Commission, is sued in her individual and Official Capacity.
16

17 365. The Defendant Liane M. Randolph, Commissioner, California Public
18 Utilities Commission, is sued in her individual and Official Capacity
19

20 366. The Defendant Clifford Rechtschaffen, Commissioner, California Public
21 Utilities Commission, is sued in his individual and Official Capacity.
22

23 367. The Defendant Martha Guzman Aceves, Commissioner, California Public
24 Utilities Commission is sued in her individual and Official Capacity.
25

1 368. The Defendant Maritza Perez is a California Public Utilities Commission, a
2 staff member, self-described as, Section Supervisor Badge #11,
3
4 Transportation License Section.

5 369. Plaintiff has attached to this complaint three (3) correct and true copies of
6 CPUC documents: DECISION 13-09-045, September 2013; DECISION 18-
7 04-005, May 2018; and RESOLUTION M-4838, issued February 5, 2019,
8 which are all incorporated herein as though fully set forth
9
10

11 370. Plaintiff sues the CPUC State Officials Commissioners' and staff, including
12 CPUC Does 1-20, individually and jointly for their violations of federal laws
13 and regulations and injuring Plaintiff's substantial constitutional rights and
14 seeks declaratory, prospective relief, and other disgorgement relief as
15 allowed or provided by law.
16
17

18 371. Plaintiff is informed and believes, and on such information and belief allege,
19 that each CPUC State Official Defendant acted in all respects pertinent to
20 this action as the agent of the other State Official Defendant, carried out a
21 joint scheme, plan or policy in all respects pertinent hereto, and the acts of
22 each State Official Defendant is legally attributable to the other State
23 Official Defendant.
24
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1 372. Plaintiff seeks equitable declaratory and prospective and disgorgement relief
2 against the State Official Defendants for their conduct, injuring Plaintiff as
3 described and as set forth below.
4

5 **UBER DEFENDANTS**
6

7 373. Defendant UBER TECHNOLOGIES, INC., is a Delaware corporation
8 headquartered in San Francisco. Uber Technologies, Inc. sells and arranges
9 passenger transportation itself and through its various subsidiaries across the
10 United States and internationally in Canada and Mexico, and other countries
11 around the world. Uber reports 2018 revenue in excess of 49 billion dollars;
12
13

14 374. Defendant RAISER-CA, LLC is upon information and belief a wholly
15 owned subsidiary of Uber Technologies, Inc., with no known employees or
16 location in California
17

18 375. Defendant UBER USA, LLC; and is upon information and belief a wholly
19 owned subsidiary of Uber Technologies, Inc. and has no known employees
20 or location in California.
21

22 376. None of the Defendant Uber companies hold federal registration, Surety
23 Bonds or insurance, as required by law, for their passenger operations and
24 Plaintiff has attached, and incorporated herein as though fully set forth of the
25 undisputed proof by true and correct copies from the Official SAFER WEB
26
27
28

1 site of the Federal Motor Carrier Safety Administration, used to verify
2 authorized operations and they show Uber and its companies have never
3 held or complied with the federal passenger transportation scheme.
4

5 377. Defendant TRAVIS KALANICK, is a Board Member, major shareholder,
6 and former CEO of Uber and is responsible for the conduct of the Uber
7 Technologies, Inc., company and its subsidiary companies conduct;
8

9 378. Defendant GARRETT CAMP is a Board Member, major stockholder, and
10 former CEO of Uber and is responsible for the conduct of the Uber
11 Technologies, Inc. company and its subsidiary companies conduct; ;
12

13 379. Defendant RYAN GRAVES is a Board Member, major stockholder and is
14 responsible for the conduct of the Uber Technologies, Inc., company and its
15 subsidiary companies conduct;
16

17 380. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendant Uber's Officers, Directors and Employees sued
19 herein as UBER DOES 1 through 50, inclusive, are currently unknown to
20 Plaintiff, who therefore sue Defendant by such fictitious names. Plaintiff is
21 informed and believe, and based thereon allege, that each of the Defendants
22 designated herein as a DOE is legally responsible in some manner for the
23 unlawful acts referred to herein. Plaintiff will seek leave of court to amend
24
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1 this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.
3

4 381. Hereinafter Uber Defendants and the DOE Defendants shall be referred to
5 collectively as “Defendants or Uber Defendants.”
6

7
8 382. Plaintiffs are informed and believe, and on such information and belief
9 allege, that each Uber Defendant acted in all respects pertinent to this action
10 as the agent of the other Uber Defendant, carried out a joint scheme,
11 business plan or policy in all respects pertinent hereto, and the acts of each
12 Uber Defendant is legally attributable to the other Defendant.
13
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15

16
17 **ADDITIONAL FACTUAL BACKGROUND OF UBER**
18

19
20 383. The Defendants set up its dispatch smartphone application as a means to
21 assign work to Plaintiff and to send instant messages throughout the work
22 day, including details about how the work is to be performed. Plaintiff was
23 required to use the same dispatch application to document, among other
24 things, the acceptance of the work, arrival and departure times from point of
25 origin to point of destination, begin movement times, rate passengers and
26
27
28

1 status updates. Plaintiffs were also required to use the telephone application
2 to comply with regulatory related documents, including waybills and
3 recovery of passengers lost items. The application also recorded completed
4 assignments and related information for purposes of processing payments for
5 Plaintiff.
6
7

8 384. While the Agreement states that Plaintiff had discretion to refuse
9 assignments, Plaintiff who has tried to exercise that right did not receive
10 alternate assignments or was temporarily suspended for minutes or hours or
11 deactivated for that day and often, after rejecting an assignment, was not
12 offered new assignments for up to two or more work days, and only restored
13 after visiting a driver hub for supervisor approval and reactivation. Rejecting
14 an assignment also resulted in the involuntary permanent termination of
15 other driver's employment with Uber and Lyft.
16
17

18 385. The Agreements required Plaintiff to abide by Uber and Lyft's "safety rules"
19 and any policies' or requests of Defendants' customers.
20
21

22 386. Defendants also controlled and limited the compensation paid to Plaintiff.
23 Plaintiff's remuneration depended on his ability to drive his or rental or lease
24 vehicle providing the passenger transportation Defendants arranged and sold.
25

26 387. The compensation levels were set forth in various "zones" by geo located
27 boundaries, a rate sheet, which was standardized and not subject to
28

1 negotiation. Defendants paid Plaintiff based upon primarily the mileage
2 from the point of origin to the point of destination. Payments were issued
3 weekly, or on demand for a fee deducted from the Plaintiff driver's fare.
4

5 388. The Agreements provided that payments to Plaintiff were subject to charge
6 backs, by Defendants and for any trip overcharges, detours due to traffic
7 enlarging passenger fares and loss or damages for which Defendants had
8 sole discretion to hold Plaintiff liable.
9

10
11 389. The Agreements provided that the relationship between Plaintiffs and
12 Defendants was terminable at will by written notice. However, in fact
13 Defendants retained the right to terminate at will without any notice, as they
14 had the power to immediately "deactivate" and cease assigning work to
15 Plaintiff and they exercised that power.
16

17
18 390. At all relevant times, Defendants controlled all aspects of customer relations,
19 including setting the price for the services, agreeing to and processing
20 customer transportation orders, scheduling the transportation, requiring the
21 exclusive method of payment directly to Defendants, prohibited passenger
22 cash or credit card payments directly to Plaintiff and handling customer
23 complaints.
24

25
26 391. The Agreements also required Plaintiffs to carry certain types of insurance
27 and specifies the levels of coverage and who is to be covered and while
28

1 required by government regulation were required of Defendants and
2 benefited Defendants business enterprise.
3

4 392. Defendants' classification and treatment of Plaintiff as "independent
5 contractors" rather than as "employees" was unlawful.
6

7 393. As a result of Defendants misclassifying Plaintiff as an "independent
8 contractor," Defendants willfully and knowingly failed to reimburse Plaintiff
9 for employment-related expenses, including mileage incurred driving his
10 own vehicles or his rented or leased vehicles in service to Defendants and
11 their customers; the costs of purchasing and/or leasing vehicles and all
12 operation costs associated with the vehicles, including fuel, maintenance,
13 and repair; the costs of various forms and amounts of insurance required by
14 Defendants; purchase of a dedicated smart-phone and related service; and
15 loss and damages determined by Defendants.
16
17
18

19 394. As a result of Defendants misclassifying Plaintiff as an "independent
20 contractor," Defendants made unlawful deductions from the wages of
21 Plaintiff for items such as insurance deductibles, fees commissions in
22 addition to Defendants' service fees and Workmen's Compensation
23 insurance.
24
25

26 395. As a result of Defendants misclassifying Plaintiff as an "independent
27 contractor," Defendants regularly failed to provide a 30-minute off-duty
28

1 meal period to Plaintiff when he worked more than five hours in a day.

2 Defendants also regularly failed to provide a second 30-minute meal period
3 to Plaintiff when he worked more than 10 hours in a day.
4

5 396. As a result of Defendants misclassifying Plaintiff as an “independent
6 contractor,” Defendants regularly failed to authorize and permit 10-minute
7 off-duty, paid, rest periods to Plaintiff every four hours worked or major
8 fraction thereof.
9

10
11 397. As a result of Defendants misclassifying Plaintiff as an “independent
12 contractor,” Defendants failed to pay minimum wage compensation to
13 Plaintiff for all hours worked.
14

15 **LYFT DEFENDANTS**

16
17 398. Defendant LYFT, Inc. is a Delaware corporation headquartered in San
18 Francisco, California. Lyft sells and arranges passenger transportation across
19 the United States and into Canada. Lyft reports revenue in excess of 2 billion
20 dollars;
21

22 399. Defendant Lyft, Inc., does not hold federal registration, Surety Bonds or
23 insurance, for its passenger operations as required by law and Plaintiff has
24 attached, and incorporated herein as though fully set forth the undisputed
25 proof by true and correct copies from the Official SAFER WEB site of the
26
27
28

1 Federal Motor Carrier Safety Administration, used to verify authorized
2 operations and they show Lyft, Inc. has never held or complied with the
3 federal passenger transportation scheme.
4

5 400. Defendant LOGAN GREEN, is CEO of Lyft and is responsible for the
6 conduct of the Lyft, Inc., company's conduct;
7

8 401. Defendant JOHN ZIMMER, is President of Lyft and is responsible for the
9 conduct of the Lyft Inc. company's conduct;
10

11 402. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of Defendant Lyft's Officers, Directors and Employees sued
13 herein as LYFT DOES 1 through 50, inclusive, are currently unknown to
14 Plaintiff, who therefore sue Defendant by such fictitious names. Plaintiff is
15 informed and believe, and based thereon allege, that each of the Defendants
16 designated herein as a DOE is legally responsible in some manner for the
17 unlawful acts referred to herein. Plaintiff will seek leave of court to amend
18 this Complaint to reflect the true names and capacities of the Defendants
19 designated hereinafter as DOES when such identities become known.
20
21

22 403. Hereinafter Defendants and the LYFT DOE Defendants shall be referred to
23 collectively as "Defendants or Lyft Defendants."
24

25 404. Plaintiffs are informed and believe, and on such information and belief
26 allege, that each Lyft Defendant acted in all respects pertinent to this action
27
28

1 as the agent of the other Lyft Defendant, carried out a joint scheme, business
2 plan or policy in all respects pertinent hereto, and the acts of each Lyft
3 Defendant is legally attributable to the other Defendant.
4

5 **ADDITIONAL FACTUAL BACKGROUND OF LYFT**
6

7 405. The Defendants set up its dispatch smartphone application as a means to
8 assign work to Plaintiff and to send instant messages throughout the work
9 day, including details about how the work is to be performed. Plaintiff was
10 required to use the same dispatch application to document, among other
11 things, the acceptance of the work, arrival and departure times from point of
12 origin to point of destination, begin movement times, rate passengers and
13 status updates. Plaintiffs were also required to use the telephone application
14 to comply with regulatory related documents, including waybills and
15 recovery of passengers lost items. The application also recorded completed
16 assignments and related information for purposes of processing payments for
17 Plaintiff.
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22 406. While the Agreement states that Plaintiff had discretion to refuse
23 assignments, Plaintiff who has tried to exercise that right did not receive
24 alternate assignments or was temporarily suspended for minutes or hours or
25 deactivated for that day and often, after rejecting an assignment, was not
26
27
28

1 offered new assignments for up to two or more work days, and only restored
2 after visiting a driver hub for supervisor approval and reactivation. Rejecting
3 an assignment also resulted in the involuntary permanent termination of
4 other driver's employment with Uber and Lyft.
5

6
7 407. The Agreements required Plaintiff to abide by Uber and Lyft's "safety rules"
8 and any policies' or requests of Defendants' customers.
9

10 408. Defendants also controlled and limited the compensation paid to Plaintiff.
11 Plaintiff's remuneration depended on his ability to drive his or rental or lease
12 vehicle providing the passenger transportation Defendants arranged and sold.
13

14 409. The compensation levels were set forth in various "zones" by geo located
15 boundaries, a rate sheet, which was standardized and not subject to
16 negotiation. Defendants paid Plaintiff based upon primarily the mileage
17 from the point of origin to the point of destination. Payments were issued
18 weekly, or on demand for a fee deducted from the Plaintiff driver's fare.
19

20 410. The Agreements provided that payments to Plaintiff were subject to charge
21 backs, by Defendants and for any trip overcharges, detours due to traffic
22 enlarging passenger fares and loss or damages for which Defendants had
23 sole discretion to hold Plaintiff liable.
24

25
26 411. The Agreements provided that the relationship between Plaintiffs and
27 Defendants was terminable at will by written notice. However, in fact
28

1 Defendants retained the right to terminate at will without any notice, as they
2 had the power to immediately “deactivate” and cease assigning work to
3 Plaintiff and they exercised that power.
4

5 412. At all relevant times, Defendants controlled all aspects of customer relations,
6 including setting the price for the services, agreeing to and processing
7 customer transportation orders, scheduling the transportation, requiring the
8 exclusive method of payment directly to Defendants, prohibited passenger
9 cash or credit card payments directly to Plaintiff and handling customer
10 complaints.
11

12 413. The Agreements also required Plaintiffs to carry certain types of insurance
13 and specifies the levels of coverage and who is to be covered and while
14 required by government regulation were required of Defendants and
15 benefited Defendants business enterprise.
16

17 414. Defendants’ classification and treatment of Plaintiff as “independent
18 contractors” rather than as “employees” was unlawful.
19

20 415. As a result of Defendants misclassifying Plaintiff as an “independent
21 contractor,” Defendants willfully and knowingly failed to reimburse Plaintiff
22 for employment-related expenses, including mileage incurred driving his
23 own vehicles or his rented or leased vehicles in service to Defendants and
24 their customers; the costs of purchasing and/or leasing vehicles and all
25
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1 operation costs associated with the vehicles, including fuel, maintenance,
2 and repair; the costs of various forms and amounts of insurance required by
3 Defendants; purchase of a dedicated smart-phone and related service; and
4 loss and damages determined by Defendants.
5

6
7 416. The As a result of Defendants misclassifying Plaintiff as an “independent
8 contractor,” Defendants made unlawful deductions from the wages of
9 Plaintiff for items such as insurance deductibles, fees commissions in
10 addition to Defendants’ service fees and Workmen’s Compensation
11 insurance.
12

13
14 417. As a result of Defendants misclassifying Plaintiff as an “independent
15 contractor,” Defendants regularly failed to provide a 30-minute off-duty
16 meal period to Plaintiff when he worked more than five hours in a day.
17 Defendants also regularly failed to provide a second 30-minute meal period
18 to Plaintiff when he worked more than 10 hours in a day.
19

20
21 418. As a result of Defendants misclassifying Plaintiff as an “independent
22 contractor,” Defendants regularly failed to authorize and permit 10-minute
23 off-duty, paid, rest periods to Plaintiff every four hours worked or major
24 fraction thereof.
25
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1 419. As a result of Defendants misclassifying Plaintiff as an “independent
2 contractor,” Defendants failed to pay minimum wage compensation to
3 Plaintiff for all hours worked.
4

5 **THE PLAINTIFF’S ATTORNEY DEFENDANTS**
6

7 420. Defendants Lichten & Liss-Riordan P. C. is a law firm of the attorneys
8 representing Plaintiff Mendel as an unnamed member in the O’Connor v.
9 Uber class action.
10

11 421. At all times herein mentioned, Defendants Lichten & Liss-Riordan P. C.,
12 Shannon Liss-Riordan, Adelaide Pagano, Anne Kramer, and each of them,
13 were, and now are, attorneys at law, duly admitted and licensed to practice
14 law in the State of California, and doing business in San Francisco County,
15 California.
16
17

18 422. Plaintiff refers to each attorney individually or as Defendant Attorneys.
19

20 423. Defendant Shannon Liss-Riordan, Attorney of the law firm Lichten & Liss-
21 Riordan, P.C. whose role was lead counsel for unnamed Plaintiff Mendel, an
22 unnamed member in the O’Connor v. Uber class action;
23

24 424. Defendant Adelaide Pagano, Attorney of the law firm Lichten & Liss-
25 Riordan, P.C whose role was counsel for unnamed Plaintiff Mendel in the
26 O’Connor v. Uber class action;
27
28

1 425. Defendant Anne Kramer, Attorney, of the law firm Lichten & Liss-Riordan,
2 P.C., whose role was counsel for unnamed Plaintiff Mendel in the O'Connor
3 v. Uber class action.
4

5 426. Defendant Attorneys: Shannon Liss-Riordan, Adelaide Pagano, Anne
6 Kramer, are on information and belief attorneys with the law firm Lichten &
7 Liss-Riordan P. C. and are representing Plaintiff Mendel as an unnamed
8 member in the O'Connor v. Uber case number 13-cv-03826-EMC, in the
9 Northern District of California, San Francisco, CA.
10
11

12 427. Plaintiffs are informed and believe, and on such information and belief
13 allege, that each Defendant Attorney acted in all respects pertinent to this
14 action as the agent of the other Defendant Attorneys or their firm Lichten &
15 Liss-Riordan, carried out a joint scheme, business plan or policy in all
16 respects pertinent hereto, and the acts of each Defendant Attorney is legally
17 attributable to the other Attorney Defendants together or together for their
18 firm Lichten & Liss Riordan, P.C.
19
20
21

22 428. Defendant Attorneys conduct fell below the applicable standard of care as
23 set forth herein injuring Plaintiff and Plaintiff seeks relief as set forth below.
24

25 **III. DAMAGES**

26 429. As a direct, foreseeable, and proximate result of Defendants' conduct,
27 Plaintiff is owed un-reimbursed business expenses plus interest, repayment
28

1 of unlawfully deducted wages, including deductions for fee commissions
2 plus interest, minimum wage plus interest and liquidated damages, premium
3 pay for missed meal periods plus interest, and premium pay for missed and
4 unpaid rest periods plus interest, the precise amount of which will be proven
5 at trial. Plaintiff is also entitled to recover the reasonable attorneys' fees and
6 costs.
7
8

9 **IV. JURISDICTION**

10
11 430. This Court has original jurisdiction over the federal law claims, including 15
12 U.S.C. §§4 and 15, 49 U.S.C. §§13901, 13902, 14303, 14102, 14704, 14707,
13
14 the 42 U.S.C. §§1983, 1988, under 28 U.S.C. §1331, Federal Question, and
15 28 U.S.C. §1343 Civil rights, 28 U.S.C. §1332, Amount in controversy, 28
16 U.S.C. §1336 Surface Transportation Board's orders, 28 U.S.C. §1337,
17 Commerce and Antitrust Regulations, This Court has authority to review
18 federal agency action pursuant to the APA, 5 U.S.C. §§ 701-706 and under
19 28 U.S.C. §1346 United States as defendant.
20
21

22 431. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367
23 over the claims alleged herein arising under the California Laws and Labor
24 Code, including but not limited to claims for the following:
25

26 a) reimbursement of business expenses under Labor Code § 2802;
27
28

- b) unlawful deduction from wages under Labor Code §§ 221, 223, 400-410;
- c) failure to provide off-duty meal periods and failure to provide off-duty paid rest periods under Labor Code §§ 226.7, 512, IWC Wage Order No. 9;
- d) minimum wage and liquidated damages under Labor Code §§ 1194, 1194.2, 1197; and,
- e) unfair competition under Bus. & Prof. Code § 17200, et seq.; including restitution arising from Defendants' unlawful business practices, under California's Unfair Competition Law ("UCL"), Business & Professions Code §§ 17203 and 17204.

432. This Court has personal jurisdiction over Defendants because they reside in and have their principal place of business in the State of California, or practice before the federal district court, and/or substantial parts of the unlawful conduct at issue took place in and caused harm in the State of California.

VENUE

433. Venue is proper in this District, UNDER 28 U.S.C. §1391, because the Defendants have their principal places of business AND Official State Offices in this District and are subject to personal jurisdiction in this District,

1 and the unlawful conduct at issue was agreed upon and occurred in this
2 District.
3

4 **V. STATUTORY AND REGULATORY FRAMEWORK**

5 434. The allegations of each of the preceding paragraphs are realleged and
6 incorporated herein by reference, and Plaintiff alleges as follows.
7

8 **Industry Regulation and Business Reform**
9

10 435. Progressive Era reformers pushed for the regulation of business and industry
11 and laws protecting workers and consumers. The Sherman Antitrust Act of
12 (1890) was the earliest attempt to regulate business conduct. The
13 Department of Commerce and Labor was created to enforce federal
14 regulations, particularly those involving interstate commerce. The Mann-
15 Elkin Act (1910) authorized the Interstate Commerce Commission to
16 regulate telegraph and telephone companies. And by 1913, a separate
17 Department of Labor was created to protect the welfare of workers and to
18 improve working conditions.
19

20 436. The most important antitrust legislation passed during Woodrow Wilson's
21 administration, which began in 1913, was the Clayton Antitrust Act (1914).
22 The Clayton Antitrust Act attempted to strengthen the Sherman Antitrust
23 Act (1890) by identifying specific illegal practices and business
24
25
26
27
28

1 combinations that were against the law if they tended to lessen competition
2 or create a monopoly.
3

4 **The Motor Carrier Act**

5
6 437. The Motor Carrier Act, (originally enacted in 1935) of deep concern here,
7 also contains antitrust provisions in addition to safety, regulatory and
8 educational requirement for the transportation business (i.e. 49 U.C.S.
9 §14303) as well as compliance and preemption of State authority, as
10 Congress has the plenary “Commerce clause” authority to do over interstate
11 commerce. Some of primary priorities to be regulated, of concern here,
12 included:
13
14

- 15 • The **Safety of the public**, the drivers and the passengers
- 16 • Preventing the Forming of unsupervised monopolies
- 17 • Prohibiting Maximum price fixing by contract among competitors
- 18 without supervision
- 19 • Price discrimination, which is charging different consumers
- 20 different prices for the same service
- 21 • Enforcement of labor expense rights from corporate abuse
- 22 • Regulating the divergent competitors contracting ability between
- 23 them to insure each participant, corporate, labor, broker, motor
- 24 carrier, drivers, and others, an honest and level playing field – the
- 25 leasing statutes – regulating driver hours - for example.
- 26 • Insuring willful State compliance and preventing State
- 27 Interference of the federal transportation scheme – Preemption
- 28

1 443. Since the removal of the exemption, which has never been restored and in
2 fact has been by federal regulation, 49 CFR §372.101, “rideshare for
3 compensation as an occupation or business IS prohibited, with enforcement
4 upon the States to comply with this prohibition by federal regulation (49
5 CFR §350.201) as all States had agreed to do by accepting federal MCSAP
6 (highway) funding.
7

8
9 444. Today, as in the years of 1935 to 1941, the preventable criminal mayhem has
10 resurrected and continues because the defendant federal officials have failed
11 to enforce State compliance or enforce Uber and Lyft’s illegal brokering of
12 passenger transportation.
13
14

15 445. The States, including California’s Defendant CPUC Commissioners’ have
16 not only failed to comply with the federal rideshare prohibition, but have
17 defied it by creating a TNC Permit allowing the prohibited conduct, Plaintiff
18 has been assaulted and suffered injury, and the media headlines, on a daily
19 basis report dozens of murders, hundreds of rapes, uncountable assaults, all
20 preventable, if the law is complied with.
21
22

23 446. Plaintiff has operated as a taxi and livery driver for over 30 years and
24 because of the Uber and Lyft unlawful business practices and shame they
25 brought to the industry, he has had his once proud, respected, and trusted
26
27
28

1 professional status reduced to the equal status of untrustworthy criminals
2 and thieves.
3

4 447. Plaintiff is also injured in his business because of Uber and Lyft's unlawful
5 conduct, which has led many consumers to shame and deride him and shun
6 his business, leading to a loss of incalculable valuable customers. This to the
7 point that media reported former U.S. Secretary of Labor Tom Perez, in
8 answering a reporter's query of his use of Uber, said he did not use Uber
9 because of their questionable labor practices.
10
11

12 13 14 **VII. THE FEDERAL REGULATORY PASSENGER SCHEME**

15 **Preliminary Introduction**

16
17 448. The allegations of each of the preceding paragraphs are realleged and
18 incorporated herein by reference, and Plaintiff alleges as follows:

19 449. The Plaintiff finds it necessary to explain the federal transportation
20 regulatory scheme by regulation and statutes. The following is in numerical
21 order from lowest to highest and proceeds like a flow chart, only in words
22 rather than graphic pictures.
23
24

25 450. It is important to realize that statutes which may be permissive, (ie. The
26 Secretary may register...becomes mandatory when the regulation says "shall
27
28

1 register” which represents the Secretary’s exercise of discretion) can be
2 made mandatory by the underlying regulations; regulations support the laws
3 of Congress in order to effectively execute the transportation scheme.
4

5 451. There are some “ambiguities” which appear to occur because the Motor
6 Carrier Act has never been repealed BUT has been amended over 84 years.
7 For example the regulation says “property” not “freight” or “passengers” the
8 confusion or ambiguity can usually be cleared with a macro view of the
9 purpose, rather than a micro literal reading of the words.
10
11

12 **The Federal Transportation Regulations**

13

14
15 452. The allegations of each of the preceding paragraphs are realleged and
16 incorporated herein by reference, and Plaintiff alleges as follows.
17

18 453. Beginning **in 2013**, California’s CPUC created the Transportation Network
19 Company Permit, or “TNC.” Next in 2014, Colorado enacted their state-
20 level legislation to authorize and regulate TNC operations. As of June 2017,
21 48 states and the District of Columbia have passed some sort of TNC
22 legislation, all violative of federal regulations.
23
24

25 454. Every one of these “State TNC Acts,” including California’s, violates each
26 States’ agreements with the federal government, through the Department of
27 Transportation, to comply with, and enforce the federal transportation laws.
28

1 455. The main thrust of all of these State TNC laws, is to unlawfully permit the
2 arranging of transportation to private vehicles as an occupation or business,
3 in direct defiance of federal laws and regulations, 49 CFR §372.101, which
4 prohibits the arranging of passenger transportation to private vehicles for
5 compensation.
6

7
8 456. Every State had agreed under federal regulation 49 CFR §350.201,
9 (Conditions a State must meet to qualify for MCSAP Grant (highway)
10 Funds), and by implication, to comply with and to not violate federal
11 transportation law.
12

13
14 457. The federal government provides financial assistance to the States to carry
15 out its national policies and commitments for a cohesive joint effort for the
16 benefit of all the American people.
17

18 458. Here, we are concerned with transportation and federal “MCSAP” or Motor
19 Carrier Safety Assistance Program funds. Like most federal grant programs,
20 the federal government attaches strings to the grant money. Strings
21 California agreed to accept.
22

23 459. States must agree to perform, to act compatible with the federal
24 transportation scheme and purpose to receive the grant money.
25

26 460. All States during the time of this action, from at least 2013 to the present
27 have agreed to act compatible with, Comply with and Enforce Federal
28

1 Transportation laws. 49 CFR §350.201 The States Agreed to be Compatible,
2 Comply and Enforce Federal Laws.
3

4 461. All of the States, including California have agreed to enforce the federal
5 prohibition against arranging or selling transportation to private vehicles for
6 compensation as an occupation or business, 49 CFR §372.101 Arranging,
7 selling passenger transportation to private vehicles for compensation
8 prohibited.
9

10
11 462. All motor carriers, those entities that sell transportation, who do not own the
12 vehicles used for the transportation must [own] lease or rent the vehicle[s]
13 from the owner to transport property by motor carriers registered and
14 regulated under 49 U.S.C. subtitle IV, Part B. (49 U.S.C. §14102 and 49
15 CFR Part 376 Lease of Vehicles – Requirements)
16

17
18 463. The regulation appears ambiguous, because it refers to property generally,
19 but it is not when read in conjunction to the laws and implementing
20 regulatory relationships, it means passenger and freight motor carriers.
21

22 464. However, as the regulation says it applies to all motor carriers regulated
23 under subtitle IV, Part B, which covers both passenger and freight motor
24 carriers. Part B covers motor carriers [freight and passenger], water carriers,
25 brokers, and freight forwarders under 49 U.S.C. §§13101 through 14916,
26 statutes, in other words not just “property” as in freight, but passengers too.
27
28

1 465. Motor carriers of passengers must comply with the federal insurance
2 requirements of 49 CFR Subpart B, [§§387.25-387.43], which in the case of
3 Uber and Lyft means 1.5 million dollars of coverage because the vehicles
4 used have less than 15 passenger capacity.
5

6 466. The California (and the other States) is required to enforce 49CFR 392.9a
7 regulation requiring federal registration of brokers and motor carriers for
8 operating authority.
9

10 467. The Federal Arbitration Act, section 1, provides that workers, who have an
11 employment contract, and are engaged in interstate commerce, are exempt
12 from arbitration.
13

14 468. From at least 2013, Uber and Lyft have been “brokering” arranging and
15 selling transportation across state lines, and drivers have been crossing state
16 lines.
17

18 469. Uber and Lyft drivers have been providing prearranged transportation,
19 entirely within California that is part of a planned total interstate journey.
20

21 470. The United States Supreme Court said: “the fact that a part of that journey
22 consists of transportation by an independent agency solely within the
23 boundaries of one state does not make that portion of the trip any less
24 interstate in character. United States v. Yellow Cab, 332 U.S. 218 (1947)
25
26
27
28

1 471. No matter how you slice it, from the interstate brokering by Uber and Lyft,
2 to the drivers crossing State lines, to the Uber and Lyft drivers providing the
3 important “prearranged ground transportation to get to the subsequent flight
4 at the airport, ship port or train station, the drivers are engaged in interstate
5 commerce as much as Uber and Lyft are engaged in interstate transportation.
6

7
8 472. **Example:** Plaintiff accepted an Uber Black ping, and it had been scheduled
9 the week previous by the corporate travel department of his New York City
10 [Manhattan] office, to pick him up from his home in San Francisco home on
11 Russian Hill and transport him to a waiting private jet at the Signature Fixed
12 Base Operator at the Mineta San Jose International Airport. Plaintiff drove
13 through the security ramp gate and on to the ramp and to the waiting running
14 Corporate Gulfstream jet, where the Uber passenger boarded the aircraft and
15 left to New York. That is interstate transportation entirely within California,
16 by Plaintiff driver and Uber.
17

18
19
20 473. Certainly not all Uber and Lyft transportation and all the drivers’ trips are
21 interstate, but once you cross the line and enter the jurisdiction of Congress
22 and its regulatory agencies, everything you do must conform to the federal
23 regulatory scheme.
24
25

26 474. The line begins, after a motor carrier exceeds 70 miles from the center of his
27 “inherently” local jurisdiction and even one trip, according to I.C.C or
28

1 FMCSA agency opinions and Federal Appellate Court decisions requires
2 compliance. I.C.C. v. Mr. B's Services, Ltd. 934 F.2d 117, (7th Cir. 1991).
3

4 475. There is no *de minimis* or trivial amount that is exempt, one trip and you're
5 in federal jurisdiction and must comply, and where Uber and Lyft are
6 concerned, since every driver is subject to being offered, accepting and
7 providing an interstate trip on the next ping, all drivers must be considered
8 as performing interstate transportation. One Trip: California v. Thompson,
9 313 U.S. 109 (1941); California v. Zook, 336 U.S. 725 (1949); All drivers
10 who can be expected to drive interstate trips are considered as engaged in
11 interstate commerce: Morris v. McComb, 332 U.S. 422 (1947)
12
13
14

15 476. Uber and Lyft unilaterally set the maximum rates by their contract with the
16 drivers which defined them as "independent contractor" drivers, having
17 independent businesses, such written horizontal (between those controlling a
18 trade or business) contracts that maximum price fix are per se illegal
19 according the U.S. Supreme Court.
20
21

22 477. Uber and Lyft claim with their recent Securities and Exchange Commission,
23 "SEC" Form S-1 official filings that Uber controls 65 % and Lyft more than
24 35% of the "rideshare" market in the United States. Between Uber and Lyft,
25 who are based in San Francisco, they dominate that market as well.
26
27
28

1 478. No performance or need for “uniform pricing” or rule of reason arguments
2 are to be heard by the court or jury. It is to be condemned.
3

4 479. There are exemptions from the federal motor carrier regulations, some apply
5 to Plaintiff Mendel, and none apply to Uber and Lyft.
6

7 480. First there are no exemptions for passenger brokers like Uber and Lyft who
8 are required to secure Surety Bonds and financial responsibility under 49
9 U.S.C. §13904(f) and because they sell passenger transportation for
10 compensation, they take fee commissions from the drivers fares, (both Uber
11 and Lyft also have Booking and Service fees) they are required to register as
12 a motor carrier as well. 49 U.S.C. §13904(d).
13
14

15 481. There are many federal exemptions under 49 U.S.C. §13506, and the two
16 that apply to Uber and Lyft are not exemptions but mandates:
17

18 a) 49 U.S.C. 13506(a)(14) brokers for motor carriers of passengers
19 are not required to have broker authority, BUT cannot broker to
20 unregistered passenger motor carriers and they must comply with
21 49 U.S.C. §13904(f) securing Surety Bonds and Insurance under
22 49 U.S.C. §31138.
23
24

25 b) 49 U.S.C. §13904(b)(2): transportation by motor vehicle provided
26 casually, occasionally, or reciprocally but not as a regular
27 occupation or business, except when a broker or other person sells
28 or offers for sale passenger transportation provided by a person

1 authorized to transport passengers by motor vehicle under an
2 application pending, or registration issued, under this part.

3 482. By the plain language Uber and Lyft cannot broker to TNC private vehicles.

4 483. By the plain language of the statute Uber and Lyft must for the protection of
5 the fare paying passengers and the [driver] motor carriers [Like Plaintiff,
6 California TCP permitted] secure Surety Bonds, in the event of Uber or
7 Lyft's insolvency the bonds pay claims; and the insurance in the event of
8 accidents or other liability.
9
10

11 484. A motor carrier is federally defined as "a person providing motor vehicle
12 transportation for compensation. (49 U.S.C. §13102(14)).
13

14 485. Both Uber and Lyft fit the description as well as the Plaintiff.

15 486. Uber and Lyft must register as motor carriers under 49 U.S.C. §§13901 and
16 13904(d).
17

18 487. Plaintiff need not register as a motor carrier as long as he keeps his
19 passenger transportation limited to inherently local "personal clientele,"
20 which he has done.
21

22 488. Uber and Lyft are also required to register as a motor carrier under 49 U.S.C.
23 14501(d)(1)(A) because they are the ones who are national operators selling
24 interstate transportation and servicing national business and private
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1 passenger travelers from around the world, unlike Plaintiffs few inherently
2 local clients.

3
4 489. Uber and Lyft besides unlawfully brokering and contracting with TNC
5 private vehicle drivers also contract with Plaintiff and other Transportation
6 Charter Party Permittees, or TCP Permits.

7
8 490. Plaintiff and other TCP Permit holders, who have federally compliant
9 commercial passenger vehicle registration and State passenger operating
10 authority are legal, and perform “inherently local” livery services.

11
12 491. Uber and Lyft, national brokers of passenger transportation, however are not
13 allowed to do as they have done which is to contract to operate the property
14 of another motor [the TCP drivers] carrier; nearly every independent TCP
15 Permitted [motor carriers] entity in the State of California without the
16 approval of the federal Surface Transportation Board, under 49 U.S.C.
17 §14303.

18
19
20
21 492. The California Public Utilities Commission does not have the authority to
22 grant to Uber or Lyft the TNC authority they have created; to operate from
23 any point of origin to any point of destination throughout California. Such a
24 blanket authority without also requiring federal motor carrier authority is
25 incompatible with previous I.C.C. decisions and federal Appellate authority
26 limiting taxis and livery vehicles to at most a 70 mile limit from the center of
27
28

1 their home base. Beyond these limits federal jurisdiction begins and requires
2 motor carrier authority. Federal district courts are to apply Chevron
3 deference to the I.C.C. decisions regarding their definitions of the taxi cab or
4 “inherently” local exemptions. *I.C.C. v. Mr. B’s Services, Ltd*, 934 F.2d 117,
5 (7th Cir, 1991).
6

7
8 493. The California Public Utilities Commission has no authority to regulate the
9 rates of motor carriers of passengers. 49 U.S.C. §14501(a)(1)(B) except for
10 requiring a notice of a change in rates 30 days before such changes.
11

12 494. The California Public Utilities Commission must comply with 350.201 and
13 knew or should have known they have no authority to enact ANY provision
14 having the force and effect of law RELATED to intrastate rates, intrastate
15 routes, or intrastate services of ANY intrastate broker passenger or freight.
16 49 U.S.C. §14501(b). SEE: *Federal Exp. V California Public Utilities*
17 *Commission* 936 F.2d 1075 (1991)
18
19

20
21 495. The California Public Utilities Commission must comply with 49 CFR
22 350.201, and has no authority to act incompatibly with federal law requiring
23 that all State motor carriers, like Plaintiff, must have commercial passenger
24 vehicle [commercial plates] registration and State passenger [TCP Permit]
25 authority. 49 U.S.C. §14501(d)(1)(B).
26
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1 496. The California Public Utilities Commission must comply with 350.201, and
2 cannot create a TNC permit, used by Uber and Lyft to broker or arrange
3 passenger transportation to private vehicles which is prohibited by federal
4 law and regulations. 49 U.S.C. §13506(b)(2) and 49 CFR §372.101.
5

6 497. Plaintiff has a federal statutory right to remedy the violations of Uber and
7 Lyft that have injured Plaintiff, 49 U.S.C. §14704.
8

9 498. Uber and Lyft have taken unlawful fee commissions without having federal
10 authority; have placed incompetent, illegal TNC drivers into Plaintiff's
11 market, causing irreparable harm in taking incalculable business from
12 Plaintiff's legal motor carrier operations.
13
14

15 499. Uber and Lyft continue to operate in defiance of numerous federal
16 requirements destroying Plaintiff's competitive marketplace.
17

18 500. Uber and Lyft are liable for damages to Plaintiff as a result of acts or
19 omissions of Uber and Lyft's unregistered motor carrier and broker conduct
20 in violation of Title 49, Subtitle IV, Part B.
21

22 501. Defendants Uber and Lyft have injured Plaintiff by failing to comply with
23 federal registration requirements for motor vehicles, 49 U.S.C.
24 14501(d)(1)(A), and as passenger brokers also acting as motor carriers under
25 49 U.S.C. 13904(d) which requires Uber and Lyft to register as motor
26 carriers as mandated by 49 U.S.C. §13901, and to comply with 49
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28

1 U.S.C. §13902, to take responsibility for the vehicles they use, by owning or
2 leasing or renting Plaintiffs vehicle property under 49 U.S.C. §14102 and the
3 underlying regulations (49 CFR §387).
4

5 502. Plaintiff has been injured because Uber and Lyft have failed to comply with
6 the federal registration scheme by placing completely illegal TNC
7 competitors into Plaintiff's market, causing irreparable incalculable financial
8 harm in the loss of business to their unlawful TNC passenger transportation
9 operations and suffered the loss of vehicle value and operating expenses to
10 which Uber and Lyft have benefitted from but have not paid for.
11
12

13 503. Federal law provides for civil penalties of \$25,000.00 dollars for each
14 violation [each interstate trip run] without having registered as a passenger
15 motor carrier, 49 U.S.C §14901, and Plaintiff seeks equitable relief that Uber
16 and Lyft should hold Plaintiff harmless from any civil fines that may be
17 levied against plaintiff by the FMCSA for his provision of interstate
18 transportation to Uber and Lyft passengers because Uber and Lyft were
19 required to have federal authority for their non-exempt interstate passenger
20 transportation, and their failure to comply placed Plaintiff in harm's way for
21 their benefit.
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26 504. This flow chart by words explains how the federal regulatory passenger
27 transportation scheme is supposed to work and be complied with an or was
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1 violated, which the defendants have by their acts as described failed to
2 comply or by omission caused harm to Plaintiff's to which he seeks
3 remedies and attorney's fees and costs as allowed by 49 U.S.C. §§14704,
4 14707.
5

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8 **VIII. CLAIMS FOR RELIEF**

9 **COUNT ONE –Violations of APA –**

10
11 **Failure to Administer and Enforce Transportation laws.**

12 Elaine Chao, U.S. Secretary of Transportation, Raymond Martinez,
13 Administrator, Loretta Bitner, Chief Enforcement, FMCSA
14

15 505. The allegations of each of the preceding paragraphs are realleged and
16 incorporated herein by reference, and Plaintiff alleges as follows.

17
18 506. An actual and justiciable controversy exists between the Plaintiffs and
19 Defendants because Plaintiffs contend, that Defendants' actions and
20 inactions as described above have violated the constitutional and federal
21 transportation law provisions cited herein.
22

23 507. Plaintiff brings COUNT ONE against the U. S. Secretary of Transportation
24 and the Department of Transportation's Federal Motor Carrier Safety
25 Administration division defendants Raymond Martinez, Administrator of the
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1 FMCSA, and Loretta Bitner, Chief Enforcement Officer, of the FMCSA.

2 Hereafter the "DOT" defendants.

3
4 508. Plaintiff seeks a declaration, under 5 U.S.C. § 702, that the U.S. Secretary of
5 Transportation, ELAINE CHAO and the Department of Transportation have
6 failed to exercise any positive discretion or take any effective remedial
7 action to repair or restore the violations by California and its Agencies of
8 Agreements California agreed to with the federal government for receipt of
9 MCSAP Funding, including conditions to comply and enforce and make
10 only compatible intrastate passenger transportation laws.

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14 509. Plaintiff seeks a declaration, including relief under 5 U.S.C. § 705, that the
15 U.S. Secretary of Transportation, ELAINE CHAO and the Department of
16 Transportation have failed to take any effective remedial action, as provided
17 for under 5 U.S.C. § 558 to repair or restore the improper making, of
18 California's Transportation Network Company permit, by California, under
19 Public Utilities Codes §§ 5430-5450 and its California Public Utilities
20 Commission DECISION 13-09-045, Adopting TNC Rules, September 2013,
21 to allow entities to secure TNC permits to sell and/or arrange passenger
22 transportation to private vehicles for compensation as an occupation or
23 business, in direct conflict with the federal regulations 49 CFR § 372.101 and
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1 federal laws 49 U.S.C. §13506(b)(2), 49 U.S.C. §14501(d)(1)(B), 49
2 U.S.C. §13901-13902.
3

4 510. The Plaintiff seeks a declaration, including relief under 5 U.S.C. §705, that
5 the U.S. Secretary of Transportation, ELAINE CHAO and the Department
6 of Transportation have failed to take any effective remedial action, or active
7 supervision, as provided for under 5 U.S.C. §558 to repair or restore or
8 prevent the illegal operations of Uber Technologies Inc., and Lyft, Inc. using
9 Transportation Network Company “TNC permits secured from the
10 California Public Utilities Commission to sell and/or arrange or broker
11 passenger transportation to private vehicles for compensation as an
12 occupation or business, in direct violation of federal regulations 49 CFR
13 §372.101 and federal laws 49 U.S.C. §13506(b)(2), 49 U.S.C.
14 §14501(d)(1)(B), 49 U.S.C. §13901-13902, 49 U.S.C. §13904(d), and 49
15 U.S.C. §13904(f).
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21 511. The U.S. Secretary of Transportation and Department of Transportation’s
22 delays and inaction to enforce and restore the conflicts, violations and
23 failures to comply with the nations passenger transportation regulations,
24 statutes and Constitutional provisions as cited herein, was without
25 observance of required procedures required by law and in violation of the
26 APA, 5 U.S.C. §706.
27
28

COUNT TWO - Violation of APA – (Arbitrary and Capricious)

Elaine Chao, U.S. Secretary of Transportation, Raymond Martinez, Administrator,
Loretta Bitner, Chief Enforcement

512. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows.

513. Plaintiff brings COUNT TWO against the U. S. Secretary of Transportation and the Department of Transportation's division, the Federal Motor Carrier Safety Administration defendants Raymond Martinez, Administrator of the FMCSA, and Loretta Bitner, Chief Enforcement Officer, of the FMCSA. Hereafter the "DOT" defendants.

514. There are no grounds to justify, complete inaction or action devoid of any deterrent, remedial, compatible or corrective effect, to assure actual supervision or insure compatible California conduct with the agreements the two sovereigns' made for MCSAP Grant funding , by the U.S. Secretary of Transportation and Department of Transportation, and FMCSA defendants when they knew of should have known serious violations and illegal activity were taking place and required action, failure to so would or could lead to unsafe conditions for drivers and passengers, unregistered rogue operations, because they received complaints and media reported the violative activity,

1 3. Plaintiff be awarded relief under the Administrative Procedures Act,
2 his costs of this action, and such other and further relief as may be
3 appropriate and as the Court may deem just and proper.
4

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6
7 **COUNT THREE – Violation of Commerce Clause**

8 (U.S. Const, Art I §8)

9 Against Defendant Xavier Becerra, Attorney General

10 515. The allegations of each of the preceding paragraphs are realleged and
11 incorporated herein by reference, and Plaintiff alleges as follows.
12

13 516. An actual and justiciable controversy exists between the Plaintiffs and
14 Defendant California Attorney General XAVIER BECERRA because
15 Plaintiffs contend, that Defendant's actions and inactions as described above
16 have violated the Supremacy and Commerce clauses and Plaintiff's U.S.
17 Constitutional Rights including violations of federal laws and regulation
18 provisions cited herein.
19
20

21 517. Plaintiff brings COUNT THREE against the California Attorney General,
22 XAVIER BECERRA, in his official capacity, as the executive officer
23 responsible for defending and executing the laws of the State of California.
24

25 518. Plaintiff alleges California Public Utilities Code §5430 through §5450 are
26 preempted because Congress has occupied the field or preempted the
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1 transportation the State has created, or conflicts with federal laws and
2 regulations as explained herein and violate the Dormant Commerce Clause.
3

4 519. The California legislature enacted California's Transportation Network
5 Company scheme, effective beginning January 2015, or a "TNC" permit
6 scheme., under Public Utilities Codes §§5430-5450 and delegated regulation
7 to the California Public Utilities Commission "CPUC."
8

9 520. The California Codes §5430-5450, cited herein and throughout violates
10 federal transportation laws and the Supremacy and Commerce clauses of the
11 United States Constitution. The Codes allow California's CPUC to exceed
12 its authority, invade federal jurisdiction and grant to private parties the
13 ability to evade and avoid federal laws and regulations interfering with and
14 burdening interstate commerce; the Codes violate California agreement in
15 accepting MCSAP grants funds to only make provisions have the force and
16 effect of law compatible with, to comply with and enforce the transportation
17 laws not avoid, evade and conflict with them, as explained herein.
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22 521. Plaintiff seeks to have the California Codes found in conflict with or
23 improperly invading a field occupied by Congressional legislation, therefore
24 violative of the Commerce clause, unconstitutional and declared preempted
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26 522. There are no grounds for California, through its Attorney General to claim it
27 has any authority to create, or enact the Codes having the force and effect of
28

1 law interfering and burdening interstate and intrastate commerce, which they
2 agreed to be compatible with, comply with and enforce as legislated by
3 Congress.
4

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6
7 **WHEREFORE**, plaintiff prays for COUNT THREE that final judgment be
8 entered against Defendant and successors declaring, ordering, and adjudging that:

9
10 1. Plaintiff seeks a declaration that the California Codes §5430-
11 5450, challenged here are unconstitutional and violate the Dormant
12 Commerce clause and are preempted.

13
14 2. Plaintiff seeks injunctive relief prohibiting the California
15 Attorney General XAVIER BECERRA and his successors from
16 implementing or enforcing the challenged Codes,
17

18 3. and requiring an official consult and review with and between
19 the federal Department of Transportation and its Federal Motor
20 Carrier Safety Administration, with the California Attorney General's
21 Office for a period of 2 years, for current and future California
22 legislative bill or agency or Commission action related to activity
23 federally defined as passenger brokers, motor carriers or passenger
24 transportation in vehicles having a capacity of up to 15 or less
25 passengers that operate in intrastate or interstate transportation and
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1 proving such consultation occurred and documenting the conformance
2 of California with the federal MCSAP funding grant agreements with
3 federal law and transportation agencies before any California
4 transportation provisions having the force and effect of law, rule or
5 regulation can be implemented or administered or enacted by
6 California or its State Commissions, Departments or Agencies or
7 Regulatory body.

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11 4. Plaintiff be awarded his costs of this action, under 42 U.S.C. §1988
12 and such other and further relief as may be appropriate and as the
13 Court may deem just and proper.
14

15
16 **COUNT FOUR – Violation of Dormant Commerce Clause**
17 (U.S. Constitution, Art I §8)

18 Defendant CPUC Commissioners' Maritza Perez and CPUC Does 1-20

19
20 523. The allegations of each of the preceding paragraphs are realleged and
21 incorporated herein by reference, and Plaintiff alleges as follows.

22 524. Plaintiff has attached the CPUC official DECISION'S 13-09-045 and 18-04-
23 005 of the Commissioners' to this complaint and are incorporated here as if
24 set forth in their entirety.
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1 525. An actual and justiciable controversy exists between the Plaintiffs and
2 Defendants California Public Utilities Commission, Commissioners' named
3 herein, Maritza Perez and Does 1-10, hereafter "CPUC Defendants" because
4 Plaintiffs contend, that CPUC Defendant's actions and inactions as more
5 fully described herein have violated federal laws causing violations of the
6 Supremacy and Commerce clauses and Plaintiff's U.S. Constitutional Rights
7 including violations of federal transportation laws and regulation provisions
8 cited herein.
9

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11
12 526. Plaintiff brings COUNT FOUR against the California State officials "CPUC
13 Defendants", in their official capacity, as Commissioners' and staff of the
14 California Public Utilities Commission responsible for regulating passenger
15 and freight ground transportation of the State of California.
16
17

18 527. Plaintiff alleges the official DECISIONS, numbered 13-09-045, effective
19 September 19, 2013 and 18-04-005, effective May 4, 2018 and attached to
20 this complaint and included herein as though fully set forth are violative of
21 federal laws and regulations, and conflict with and interfere with a
22 transportation field Congress has occupied and the State of California in
23 accepting MCSAP Grant Funds, has agreed to comply, enforce and be
24 compatible with, as explained herein and the DECISIONS violate those
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1 State agreements and the Supremacy and Dormant Commerce Clauses of the
2 United States Constitution, and Plaintiff's constitutional rights.

3
4 528. The CPUC Agency, has created by DECISION 13-09-045, Adopting TNC
5 Rules, September 2013, the TNC permit scheme allows entities to secure
6 TNC permits to sell and/or arrange passenger transportation to private
7 vehicles for compensation as an occupation or business, contrary to and in
8 direct conflict with, and occupy the field Congress has legislated in the
9 federal regulations over interstate and intrastate commerce under, at least 49
10 CFR §372.101 and federal laws 49 U.S.C. §13506(b)(2), 49 U.S.C.
11 §14501(d)(1)(B), 49 U.S.C. §13901-13902, and as set forth herein.
12
13
14

15 529. The Defendant CPUC Commissioners' as State officials have exceeded their
16 authority and granted to private parties the ability to evade and avoid federal
17 laws and regulations and financial responsibility causing interfering with,
18 and burdening interstate commerce and improperly occupied Congress'
19 legislative field and violated the federal transportation laws in violation of
20 the Supremacy and Commerce clauses of the U.S. Constitution.
21
22

23 530. Plaintiff contends the Commissioners' directed their staff, by their
24 DECISION 18-04-005, to conduct an audit of Transportation Charter Party
25 Permit "TCP" holders (commercial vehicle and passenger authority)
26 including Plaintiff.
27
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531. Plaintiff contends the CPUC Defendants' suspended his TCP Permit without notice or due process before the CPUC DECISION, 18-04-005, effective May 4 2018, had even become effective, and did so without any legal or just reason.

532. Their staff member, Section Supervisor, Maritza Perez, used coercion, the active or inactive status of Plaintiff's TCP Permit, to force Plaintiff to surrender his private papers, while demanding money, unlawfully under California Public Utilities Code §421, in violation of his Fourth and Fifth Amendment rights as applied to the States through the Fourteenth Amendment.

533. Plaintiff contends that he was fully compliant with his TCP Permit and its reporting obligations and fees, yet suffered several suspensions and revocations without due process and by unjustified unlawful means injuring him in his substantial rights and liberty interests.

534. Plaintiff contends the actions of the CPUC defendants all was a significant factor in unlawfully stopping him from earning an honest living in the profession of his choice and destroying his lawful business.

535. Plaintiff contends that the Commissioners' have never suspended or revoked the Defendants Uber or Lyft for their unlawful operations, even after issuing a letter to cease and desist, and granted a "Settlement Agreement" to allow

1 Defendants Uber and Lyft to continue to operate without State or federal
2 operating authority to provide regulated passenger transportation.
3

4 536. Plaintiff contends that he was treated to unlawful unequal application of the
5 CPUC laws, rules and regulations in violation of his rights as an individual
6 proprietor worker versus the CPUC Defendants favoring Corporations who
7 the CPUC Defendants favor and appease because of improper lobbying, as
8 set forth herein.
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11 537. Plaintiff contends that the CPUC Defendants demonstrate their
12 discrimination by allowing Defendants Uber and Lyft to continue to operate
13 for 5 years, without proper State TCP authority and TNC authority, or
14 required federal operating authority while violating Plaintiff's Fourteenth
15 Amendment rights by suspending Plaintiff for operating lawfully in violation
16 of his rights to be secure in his papers and property of the Fourth
17 Amendment and right to due process and equal application of the laws of the
18 Fifth Amendment causing injury to Plaintiff's rights and property.
19
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22 538. The Plaintiff alleges California Public Utilities Commission DECISIONS,
23 numbered 13-09-045 and 18-04-005 are preempted because Congress has
24 occupied the field or preempted the transportation the Commission has
25 unlawfully created and conflicts with federal laws and regulations and
26 unlawfully burdens federally regulated interstate and intrastate commerce in
27
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1 a field occupied by Congress' legislative Acts, laws and regulations as set
2 forth and explained herein and violate the Supremacy and Dormant
3 Commerce Clauses of the United States Constitution.
4

5 539. The CPUC Defendants' DECISIONS enacted California's Transportation
6 Network Company scheme, effective beginning January 2013, or a "TNC"
7 permit scheme, and continue their unlawful interference with their
8 DECISION 18-04-005, effective May 4, 2018 allowing for illegal or
9 unlawful and unregulated competitors to compete with Plaintiff's lawful
10 TCP permit and business.
11
12

13 540. The CPUC Defendants DECISIONS cited herein and throughout violates
14 federal transportation laws and the Supremacy and Commerce clauses of the
15 United States Constitution. The Codes allow California's CPUC to exceed
16 its authority, invade federal jurisdiction and grant to private parties the
17 ability to evade and avoid federal laws and regulations interfering with and
18 burdening interstate commerce; the Codes violate California's agreement in
19 accepting MCSAP grants funds to only make provisions have the force and
20 effect of law compatible with, to comply with and enforce the transportation
21 laws and not to avoid, evade and conflict with them, as explained herein.
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541. Plaintiff seeks to have the California Codes found in conflict with or
improperly invading a field occupied by Congressional legislation, therefore
violative of the Commerce clause, unconstitutional and declared preempted

542. There are no grounds for Defendants Commissioners through its California
Constitutional authority to claim it has any authority to create, or enact the
Codes having the force and effect of law interfering and burdening interstate
and intrastate commerce, which their State of California had agreed to be
compatible with, comply with and enforce as legislated by Congress.

COUNT FIVE – Plaintiff’s Fourteenth Amendment Rights

(42 U.S.C. §1983, 1988)

Defendant CPUC Commissioners’ Maritza Perez and CPUC Does 1-20

543. The allegations of each of the preceding paragraphs are realleged and
incorporated herein by reference, and Plaintiff alleges as follows.

544. Plaintiff has attached the CPUC official DECISION’S 13-09-045 and 18-04-
005 of the Commissioners’ to this complaint and are incorporated here as if
set forth in their entirety.

545. Plaintiff has also attached the CPUC RESOLUTION issued 2019 and is
incorporated herein as it fully set forth, because of its relevance regarding
the Plaintiff’s PUCTRA fees dispute herein.

1 546. An actual and justiciable controversy exists between the Plaintiff and
2 Defendants California Public Utilities Commission, Commissioners' named
3 herein, Maritza Perez and Does 1-20, hereafter "CPUC Defendants" because
4 Plaintiff contend, that CPUC Defendant's actions and inactions as more fully
5 described herein have violated federal laws causing violations of Plaintiff's
6 Fourth and Fifth Amendment as applicable to the States through the
7 Fourteenth Amendment, of the U.S. Constitution and the Commerce clause
8 cited herein.
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12 547. Plaintiff brings COUNT FIVE against the California State officials "CPUC
13 Defendants", in their official capacity, as Commissioners' and staff of the
14 California Public Utilities Commission Maritza Perez and Does 1-20,
15 responsible for executing, regulating and administering the DECISIONS of
16 the California Public Utilities Commission, Commissioners.'
17

18
19 548. Plaintiff alleges the official DECISION'S, numbered 13-09-045, effective
20 September 19, 2013 and 18-04-005, effective May 4, 2018 and attached to
21 this complaint are violative of federal laws and regulations, and conflict
22 interfere and burden interstate commerce; a transportation field Congress
23 has occupied and the State of California by accepting MCSAP Grant Funds,
24 has agreed to comply, enforce and be compatible with, as explained herein.
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1 549. The DECISIONS violate those State agreements, the Supremacy and
2 Dormant Commerce Clauses of the United States Constitution, and
3 Plaintiff's constitutional rights, to due process and to be secure in his liberty
4 interests, private papers and property as set forth herein.
5

6 550. The CPUC Agency, has created by DECISION 13-09-045, Adopting TNC
7 Rules, September 2013, the TNC permit scheme allows Defendants Uber
8 and Lyft to secure TNC permits to sell and/or arrange passenger
9 transportation to private vehicles for compensation as an occupation or
10 business, contrary to and in direct conflict with, the field of law occupied by
11 Congress which has legislated federal authority over interstate and intrastate
12 commerce under, 49 CFR §372.101 and federal laws 49 U.S.C.
13 §13506(b)(2), 49 U.S.C. §14501(d)(1)(B), 49 U.S.C. §13901-13902, and as
14 set forth herein.
15

16 551. The Defendant CPUC Commissioners' as State officials have exceeded their
17 authority, violated California's Agreement with the Department of
18 Transportation, and granted to private parties the ability to evade and avoid
19 federal laws and regulations and financial responsibility causing, interfering
20 with, and burdening interstate commerce and causing unlawful competition
21 harming Plaintiff and causing him loss of customer business and financial
22 injuries.
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1 552. Plaintiff contends the Commissioners' directed their staff, by their
2 DECISION 18-04-005, to conduct an audit of Transportation Charter Party
3 Permit "TCP" holders (commercial vehicle and passenger authority)
4 including Uber and Plaintiff.
5

6
7 553. Plaintiff contends such audit was unlawful and for an improper purpose. The
8 CPUC Defendants have no authority under State or federal law to tax the
9 gross fares (whether intrastate or interstate). Their only the authority, lies in
10 California Public Utilities Code §421, to establish a fixed fee for TCP
11 permits based upon the CPUC predetermined annual budget needs, which
12 has no bearing or relationship to Plaintiff's business earnings.
13
14

15 554. Plaintiff contends the CPUC Defendants' suspended his TCP Permit without
16 notice or due process and demanded approximately \$457.00 plus dollars, as
17 an alleged tax on his gross receipts which they had no authority to demand.
18

19 555. The CPUC DECISION, 18-04-005, became effective May 4, 2018, ,
20 directing the CPUC staff to conduct the unlawful audit of Plaintiff and they
21 did so in April 2018 before the DECISION was effective, and their actions
22 were without any legal or just lawful reason.
23
24

25 556. Their staff member, Section Supervisor, Maritza Perez, used coercion, the
26 active or inactive status of Plaintiff's TCP Permit, to force Plaintiff to
27 surrender his private papers, while demanding money, unlawfully under
28

1 California Public Utilities Code §421, in violation of his Fourth Amendment
2 to be secure in his person, papers and property and Fifth Amendment, due
3 process rights, as applied to the States through the Fourteenth Amendment.
4

5 557. Plaintiff contends that he was fully compliant with his TCP Permit, the
6 required reporting obligations and proper fees, yet suffered several unlawful
7 suspensions and revocations without due process and by unjustified unlawful
8 means injuring him in his substantial rights and liberty interests.
9

10
11 558. Plaintiff contends the actions of the CPUC defendants all in depriving him
12 of his substantial rights, his proper use of his TCP permit, and these
13 unlawful acts were a significant factor in unlawfully preventing him from
14 earning an honest living in the profession of his choice and destroying his
15 lawful business.
16

17
18 559. Plaintiff contends that the CPUC Defendants and particularly Maritza Perez
19 and CPUC Does 1-20 applied their actions against the Plaintiff, an
20 individual, in a discriminatory manner, in an unequal application of the law
21 because CPUC Defendants have never suspended or revoked the Defendants
22 Uber or Lyft, rich corporate entities, for their actual unlawful operations,
23 even after having issuing a letter to cease and desist, and further granted
24 Uber an illegal "Settlement Agreement" to allow Defendants Uber and Lyft
25 to continue to operate without legitimate State or any federal operating
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1 authority to provide regulated passenger transportation harming Plaintiff's
2 right to a competitive market with legal competition.
3

4 560. Plaintiff contends that he was treated to unlawful unequal application of the
5 CPUC laws, rules and regulations in violation of his rights as an individual
6 proprietor worker versus the CPUC Defendants favoring Uber and LYFT
7 Corporations who the CPUC Defendants favored by accepting Uber and
8 Lyft's improper lobbying, as set forth herein.
9
10

11 561. Plaintiff contends that the CPUC Defendants demonstrate their
12 discrimination by allowing Defendants Uber and Lyft to continue to operate
13 for 5 years, from 2013 -2018, without proper State TCP authority and TNC
14 authority, or required federal operating authority which they were required
15 to enforce by federal law the State of California had agreed to.
16
17

18 562. Instead they discriminatorily violated Plaintiff's Fourteenth Amendment
19 rights without justification causing injury to Plaintiff's liberty and property
20 interests.
21

22 563. The CPUC Defendants' DECISION (2013) enacted California's
23 Transportation Network Company scheme, effective beginning January
24 2013, or a "TNC" permit scheme, and they continue their unlawful
25 interference with their DECISION 18-04-005, effective May 4, 2018
26
27
28

1 allowing for illegal and unlawful, unregulated competitors UBER and LYFT
2 to compete with Plaintiff's lawful TCP permit and business.
3

4 564. There are no grounds for Defendants Maritza Perez and CPUC Does 1-20
5 through the CPUC California State Constitution authority to claim it has any
6 authority to grant illegal competition, to audit or tax the gross passenger
7 fares, or any fares of Plaintiff; to subjecting Plaintiff to their abusive process
8 without any lawful reason depriving him of his liberty, property and
9 business in violation of his constitutional rights as set forth herein.
10
11

12
13
14 **WHEREFORE**, plaintiff prays for COUNT FOUR and FIVE that final judgment
15 be entered against each Defendant declaring, ordering, and adjudging that:

16 1. Plaintiff seeks a declaration that the CPUC DECISIONS challenged
17 here violate federal laws and regulations as set forth and explained herein
18 and are unconstitutional, violate the Dormant Commerce clause and
19 should be preempted.
20

21
22 2. Plaintiff seeks a declaration that the CPUC Defendants violated
23 Plaintiff's Fourth and Fifth Amendment Rights, by CPUC Defendants, as
24 set forth and explained herein and as applied to the States through the
25 Fourteenth Amendment of the United States Constitution.
26
27
28

1 3. Plaintiff seeks a declaration that the CPUC Defendants unlawfully
2 deprived Plaintiff of his TCP Permit, charged unlawful fees, which was a
3 factor for the loss of liberty interests his preferred form of living and the
4 destruction of his business.
5

6 4. Plaintiff seeks injunctive relief prohibiting the CPUC Defendants
7 their successors from implementing or enforcing the challenged
8 DECISIONS, and requiring an official consult and review with and
9 between the federal Department of Transportation and its Federal Motor
10 Carrier Safety Administration, with the California Public Utilities
11 Commission or its successor State organization for a period of 2 years,
12 for current and future Commission regulation and action related to
13 activity federally defined as passenger brokers, motor carriers or
14 passenger transportation in vehicles having a capacity of up to 15 or less
15 passengers that operate in intrastate or interstate transportation and
16 documenting such consultation occurred and documenting the
17 compliance with California's agreement for MCSAP Funding grants with
18 the Department of Transportation, by the Commission or its successors
19 and the appropriate federal agencies, the Department of Transportation's
20 Federal Motor Carrier Safety Administration division for current and
21 future California Commission transportation regulation provisions having
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1 the force and effect of law, rule or regulation can be implemented or
2 administered or enforced by California or its State Commissions,
3 Departments or Agencies or Regulatory body or successors.
4

5 5. Plaintiff seeks the disgorgement of PUCTRA fees unlawfully taken
6 from and paid to the California Public Utilities Commission, under the
7 authority of the U.S. Supreme Court, *Dennis v. Higgins*, 498 U.S. 439
8 (1991) and the restoration of his TCP permit as previously issued.
9
10

11 6. Plaintiff be awarded his costs of this action, under 42 U.S.C. §1988
12 and such other and further relief as may be appropriate and as the Court
13 may deem just and proper,
14
15

16 **COUNT SIX – ANTITRUST SHERMAN ACT §1**

17 **Defendants UBER and LYFT**

18 565. The allegations of each of the preceding paragraphs are realleged and
19 incorporated herein by reference, and Plaintiff alleges as follows.
20

21 566. Each Defendants restraint constitute agreements that unreasonably restrain
22 competition in the San Francisco and California market for passenger
23 transportation services in violation of Section 1 of the Sherman Act, 15
24 U.S.C. §1.
25
26
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28

1 567. The defendants' driver agreements have had and will continue to have
2 anticompetitive effects by protecting defendants from driver competition,
3 raise barriers to entry, drive out established competition and retard services
4 and innovation of the relevant market place.
5

6 568. These agreements are per se illegal agreements and are not necessary to
7 achieve any of the Defendants allegedly procompetitive goals. Any
8 procompetitive benefits are outweighed by the anticompetitive harm and
9 there are less restrictive alternatives by which the defendants would be able
10 to achieve procompetitive goals.
11
12

13 569. Plaintiff's injury flows from the Defendants unlawful written contract price
14 fixing scheme among independent contractor driver tradesmen. Plaintiff and
15 other drivers are in no position to control the market or determine their own
16 *competitive* prices because the defendants directly interfere with the free
17 play of market price forces, the very evil the Sherman Act section 1 was
18 designed to prevent.
19
20
21

22 570. Courts have no ability to determine the acceptance of any of Defendants
23 justifications, it is enough that the defendants fix prices destroying the free
24 play of market price forces conduct Congress' Sherman Act was designed to
25 prevent.
26
27
28

1 571. Plaintiff with other established and new entry participants suffer from the
2 barriers of free market price flow erected by Defendants written agreement
3 price fixing scheme. The scheme causes a loss of customers, innovation, and
4 forces Plaintiff and competitors to sell valuable luxury passenger
5 transportation well below the cost to provide it, not because he wants to
6 charge more or passengers are unwilling to pay more, but because of the
7 dominant market control by Defendants and their prohibited maximum
8 pricing control of most competitors causing restraint upon the competitive
9 market place.
10
11
12

13 572. Plaintiff's suffered irreparable harm in the loss of customers, damages
14 between the prohibited price fixing Defendants established and his fair retail
15 prices resulting in lost expenses and profits and the destruction of his
16 business.
17
18

19 **WHEREFORE**, plaintiff prays, for COUNT SIX that final judgment
20 be entered against each Defendant declaring, ordering, and adjudging
21 that:
22

23 573. The Defendants Uber and Lyft are found to have respectively horizontal
24 driver contracts with maximum fixed pricing, causing competitive injury to
25 plaintiff and others: and
26
27
28

- 1 a) The aforesaid agreements unreasonably restrain trade and are
2 illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1;
3 b) The aforesaid written amount to and are horizontal price fixing
4 agreements and are per se illegal;
5 c) Each Defendant be permanently enjoined from engaging in,
6 enforcing, carrying out, renewing, or attempting to engage in,
7 enforce, carry out, or renew the agreements in which it is alleged to
8 have engaged, or any other agreement having a similar purpose or
9 effect in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
10 d) Each Defendant eliminate and cease enforcing all Independent
11 contractor driver Restraints and be prohibited from otherwise
12 acting to restrain trade unreasonably;
13 e) Each Defendant fund and undertake programs to inform drivers of
14 drivers rights to encourage customers to use any payment method
15 they choose;
16 f) Award Plaintiff treble damages and be awarded its costs of this
17 action and reasonable attorneys' fees, and such other relief as may
18 be appropriate and as the Court may deem proper.
19
20

21 **COUNT SEVEN – PRIVATE ENFORCEMENT OF REGISTRATION**
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(49 U.S.C. §§ 13901, 13904(d), 13904(f), 14501(d), and 14707(a))

Defendants UBER and LYFT⁶

574. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows.

575. Plaintiff has attached the CPUC official DECISION'S 13-09-045 (Sept. 2013) and 18-04-005 (May 2018) of the Commissioners' to this complaint and are incorporated here as if set forth in their entirety.

576. An actual and justiciable controversy exists between the Plaintiff and Defendants Uber and Lyft because Plaintiff contends the Uber and Lyft Defendants are conducting unauthorized; interstate and intrastate passenger broker and motor carrier operations throughout the United States and California in violation of the following federal statutes: 49 U.S.C. §§ 13901, 13904(d), 13904(f), 14501(d), 31138, thereby injuring Plaintiff by diverting passengers and revenue.

577. Plaintiff contends that the defendants Uber and Lyft have been holding themselves' out as "authorized" *interstate* prearrange ground transportation providers serving interstate and intrastate passenger transportation from any point of origin to any destination, which means they are holding themselves

⁶ Defendants Uber and Lyft include the subsidiaries and Officers, Directors, Employees, Agents and Uber Does 1-300, Lyft Does 1-300 of each company inclusive.

1 out as motor carriers as defined under federal law and under well-established
2 federal agency decisions.

3
4 578. There are no limits in their smartphone application to the distance a
5 passenger can travel. There are no limits under State or federal law to
6 “authorized” passenger ground transportation providers.
7

8 579. Defendants Uber and Lyft advertise via pop up ads on the internet, radio and
9 TV commercials, and promote their interstate travel via their blogs and
10 email marketing campaigns. Defendant Uber, in 2016, offered Uber
11 Passport, a prearranged ground transportation service from San Diego, CA
12 across the American-Mexican border providing foreign commerce. Uber
13 secured the endorsement of the then Mayor of San Diego, whose
14 endorsement was broadcast across the major networks, NBC, CBS and
15 ABC. Defendant Lyft promotes its interstate transportation by sending out
16 an email announcement to passengers and drivers alike, applauding there
17 billion rides achievement noting the longest Lyft ride was 639 miles from
18 Denver, CO to Sioux Falls, IA.
19
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23 580. Plaintiff contends Defendant Uber and Lyft have no authorization to provide
24 interstate or intrastate passenger motor carrier transportation. The Federal
25 Motor Carrier Safety Administration maintains an official U.S. government
26 web site called SAFER, which allows law enforcement, shippers, motor
27
28

1 carriers, and the general public to immediately access their data revealing
2 who is, who is not authorized, and who never has had federal authorization
3 to operate as passenger brokers, motor carriers, and freight forwarders. The
4 SAFER web site also keeps a complete history and safety record of each
5 current, not authorized and revoked or other condition for ready
6 determinations. True and correct copies of the SAFER web site showing
7 these results for Uber and Lyft are attached to this complaint, and
8 incorporated as though fully set forth herein.
9
10
11

12 581. The Defendants Uber Technologies, Inc. and its subsidiaries have never had
13 federal authority or qualifying insurance or Surety Bonds to provide the
14 passenger transportation they sell and arrange for compensation. Uber
15 Freight, one subsidiary does have freight broker authority. This also means
16 because of the related requirements for ANY broker authority one must
17 prove 3 years of experience and pass a written knowledge test to secure
18 federal broker authority. Uber the parent cannot claim ignorance of the
19 requirements to broker passenger transportation.
20
21
22

23 582. Defendant Lyft, Inc., has never had any federal authorization to offer for sale
24 or arrange prearranged ground transportation, and true and correct copies of
25 the SAFER web history has been attached to this complaint, and are
26 incorporated as though fully set forth herein.
27
28

1 583. Defendants Uber and Lyft misrepresented their authority to Plaintiff and
2 placed him (and all other drivers) in a position to provide unauthorized
3 federal and California passenger transportation on their behalf, subjected
4 him (and all other drivers) to the risk of severe federal fines in excess of
5 \$25,000.00, imprisonment for failure to pay the fines and participating in
6 under insured operations subjecting Plaintiff to claims in excess of
7 Plaintiff's commercial insurance some \$750,000.00 short of Plaintiff's State
8 qualified coverage and risking certain financial ruin.

9 584. The Defendants Uber and Lyft "arrange for and sell" passenger
10 transportation to private motor vehicles (not commercially registered) who
11 do not hold State passenger authority (Transportation Charter Party, "TCP"
12 permits) for compensation as an occupation or business thereby injuring
13 Plaintiff by diverting passengers and revenue.

14 585. Defendants Uber and Lyft's California TNC passenger transportation
15 operations are unauthorized and cannot be federally authorized because TNC
16 operations are federally prohibited under 49 U.S.C§13506(b)(2) and federal
17 regulation 49 CFR§372.101. Defendants TNC operations unlawful diverts
18 passengers and revenue from Plaintiff's lawful operations and toward their
19 unauthorized and federally prohibited operations to improperly vetted,
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1 unlicensed, unauthorized, TNC drivers injuring Plaintiff by reducing and
2 diverting passengers and revenue.
3

4 586. Plaintiff contends Defendants Uber and Lyft's unauthorized and prohibited
5 passenger operations provide the evil opportunity that would not otherwise
6 exist BUT FOR their providing unauthorized prohibited TNC passenger
7 transportation to non-commercially registered private motor vehicles and
8 unlicensed unscrupulous drivers who have preyed on innocent passengers,
9 who commit preventable murder, rape and assaults, unnecessarily
10 endangering unsuspecting members of the public, including Plaintiff as an
11 Uber or Lyft rider.
12

13
14
15 587. Plaintiff contends that if the federal regulatory scheme was followed, by
16 Defendants Uber and Lyft, and the CPUC Defendants did not make TNC
17 permits allowing Uber and Lyft to avoid and evade the Federal scheme then
18 Uber and Lyft would never have existed in the first place to allow an Uber or
19 Lyft driver to either be accosted or the driver able to accost a passenger. The
20 numerous media accounts of carnage would never have occurred.
21

22
23 588. The media reports dozen of murders, hundreds of rapes and uncountable
24 assaults committed by individuals identified as Defendants Uber and Lyft's
25 drivers, which criminal events were at the very least preventable if Uber and
26 Lyft were not providing prohibited passenger transportation in the first
27
28

1 place. The billion dollar losses these companies report pale to the damage
2 there prohibited and unauthorized operation have made possible.
3

4 589. Plaintiff contends Defendants Uber and Lyft have no justification for their
5 unlawful passenger transportation operations in defiance of federal
6 prohibitions and their failure to comply with mandatory registration, Surety
7 Bond, and insurance requirements of the federal regulatory scheme whose
8 purpose and compliance act as an active restraint creating preventable
9 barriers to the carnage their misconduct contributed to and described herein.
10 Defendants Uber and Lyft have rendered the entire purpose of the federal
11 transportation regulatory scheme and U.S. policy worthless.
12
13
14

15 590. Plaintiff contends Defendants Uber and Lyft's failure to actually comply
16 with 49 U.S.C. §14501(d)(1)(C), requiring passenger transportation,
17 "...service pursuant to a contract for..." rather than their "waybills" which
18 do not positively identify the Defendants Uber and Lyft's passengers,
19 likewise invites unscrupulous passengers to rely on their known incomplete
20 identification to assault Drivers, as occurred to Plaintiff, leaving Plaintiff
21 with insufficient information to assist police in their investigation of
22 criminal conduct.
23
24
25

26 591. Additionally, Defendants Uber and Lyft's unauthorized and prohibited
27 operations cause Plaintiff, a 30 year career driver to suffer being maligned
28

1 by their passengers who insult and malign Plaintiff's trade and reputation
2 based on other drivers' misconduct as reported by the media.

3
4 592. Defendants Uber and Lyft have no reasonable justification to create
5 insufficient contracts, or "waybills" between unknown passengers, such as
6 "2" and "PJ" and their well identified drivers to the waybill. This federal law
7 requirement 49 U.S.C §14501(d)(1)(c), has an effective deterrent purpose
8 and Defendants Uber and Lyft have rendered it worthless.
9

10
11 **WHEREFORE**, plaintiff prays, for COUNT SEVEN that final judgment be
12 entered against each Defendant declaring, ordering, and adjudging that:

13
14 a) Declare that defendants Uber and Lyft, operated in federally
15 regulated interstate and intrastate commerce for an illegal purpose
16 by conduct as follows:

17
18 i. operate as a "passenger broker" selling passenger
19 transportation for compensation as a motor carrier to
20 unauthorized private motor vehicles without securing federal
21 authority in violation of 49 U.S.C. §13904(d) and 49
22 CFR§392.9a;

23
24
25 ii. operate as a "passenger broker" selling and arranging
26 passenger transportation for compensation to unauthorized
27 private motor vehicles without securing required Surety
28

1 Bonds and insurance in violation of 49 U.S.C. §13904(f) and
2 49 U.S.C. §31138.

3
4 iii. operate a federally prohibited business or occupation,
5 beyond the legal scope of their California TNC permit, as a
6 broker or person selling, or offering for sale passenger
7 transportation for compensation to private motor vehicles in
8 violation Federal law 49 U.S.C. §13506(b)(2).
9

10
11 iv. operate a federally prohibited business or occupation,
12 beyond the legal scope of their California TNC permit, as a
13 broker or person who sold or offered for sale, or provided or
14 procured or furnished or arranged for, passenger
15 transportation for compensation to private motor vehicles in
16 violation Federal regulation 49 C.F.R. §372.101.
17

18
19 v. Operate as a Transportation Network Company's selling
20 "prearranged ground transportation" in intrastate and
21 interstate commerce for compensation without required
22 valid California State passenger vehicle registration, without
23 valid State passenger authority and without valid federal
24 authority in violation of 49 U.S.C. §14501(d) and federal
25 regulation 49 CFR §392.9a.
26
27
28

1 vi. Sold and sell passenger transportation for compensation
2 without authority or federal registration as motor carriers as
3 mandated and in violation of 49 U.S.C. §13904(d) and 49
4 U.S.C. §13901 and 49 U.S.C. §14501(d)(1)(A) and federal
5 regulations 49 CFR §392.9a.
6

7
8 vii. Sold and sell passenger transportation as unauthorized motor
9 carriers to private motor vehicles they did not own, rent or
10 lease in violation of federal laws 49 U.S.C. §14501(d)(1)(B)
11 and 49 U.S.C. §14102 and federal regulations 49 CFR PART
12 376.
13
14

15 b) Declare that defendants Uber and Lyft's operations selling and
16 arranging federally prohibited passenger transportation to private
17 motor vehicles for compensation as an occupation or business in
18 violation of 49 U.S.C. §13506(b)(2) and federal regulation 49 CFR
19 §372.101 is a per se violation of the law entitling Plaintiff to swift
20 injunctive relief to immediately restrain defendants Uber and Lyft:
21
22

23 i. From selling or arranging passenger transportation to private
24 motor vehicles for compensation as an occupation or
25 business;
26
27
28

- 1 ii. Prohibit defendants Uber and Lyft from brokering passenger
2 transportation until and unless they secure from Surety
3 Bonds and Insurance in an amount and limits approved by
4 the U.S. Secretary of Transportation and produce that proof
5 to the Court for verification before commencing the
6 brokering, arranging or selling of passenger transportation to
7 State and federally authorized passenger motor carriers.
8
9 iii. Prohibit defendants Uber and Lyft from selling passenger
10 transportation for compensation without first securing
11 federal registration as a motor carrier and related mandatory
12 insurance.
13
14
15
16
17

18 **DEFENDANTS UBER**

19 **COUNT EIGHT REIMBURSEMENT OF BUSINESS EXPENSES**

20 Defendants UBER - (LABOR CODE § 2802)

21
22
23 593. The allegations of each of the preceding paragraphs are realleged and
24 incorporated herein by reference, and Plaintiff alleges as follows.

25
26 594. While acting on the direct instruction of Defendants and discharging their
27 duties for them, Plaintiffs incurred work-related expenses. Such expenses
28

1 included but were not limited to the purchase and/or lease of vehicles; fuel,
2 maintenance, and other vehicle operating costs; costs of replacing and/or
3 upgrading vehicles various forms of insurance; cellular telephone and
4 applications required for receiving dispatch assignments and tracking
5 progress. Plaintiff incurred these substantial expenses and losses as a direct
6 result of performing their job duties for Defendants.
7

8
9 595. Defendants failed to indemnify or in any manner reimburse Plaintiffs for
10 these expenditures and losses. By requiring Plaintiff to pay expenses and
11 cover losses that they incurred in direct consequence of the discharge of
12 their duties for Defendants and/or in obedience of Defendants' direction,
13 Defendants violated Labor Code § 2802.
14

15
16 596. By unlawfully deducting wages and failing to reimburse Plaintiffs,
17 Defendants are also liable for reasonable attorneys' fees and costs under
18 Labor Code § 2802(c).
19

20
21 597. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered
22 substantial losses according to proof, as well as pre-judgment interest, costs,
23 and attorneys' fees for the prosecution of this action.
24

25 598. Plaintiffs request relief as described below
26

27
28 **COUNT NINE UNLAWFUL DEDUCTIONS FROM WAGES**

(LABOR CODE § 221 AND IWC WAGE ORDER NO. 9, § 8)
Defendants Uber

599. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows.

600. The Labor Code § 221 provides: “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

601. IWC Wage Order No. 9, § 8 provides that the only circumstance under which an employer can make a deduction from an employee’s wage due to payment shortage, breakage or business loss is if the employer can show that the shortage, breakage, or business loss was the result of the employee’s gross negligence or dishonest or willful act.

602. These and related statutes, along with California’s fundamental public policy protecting wages, prohibit employers from subjecting employees to unanticipated or unpredicted reductions in their wages; making employees the insurers of their employer’s business losses; otherwise passing the ordinary business losses of the employer onto the employee; or taking deductions from wages for business losses in any form unless the employer

1 can establish that the loss was caused by a dishonest or willful act, or gross
2 negligence of the employee.
3

4 603. Defendants violated Labor Code § 221 and IWC Wage Order No.9, § 8 by
5 unlawfully taking deductions from Plaintiff's compensation to cover certain
6 ordinary business expenses of Defendants, including but not limited to,
7 deducting fee commissions for the unauthorized sales and arranging of
8 passenger transportation, charges for Workmen's Compensation Insurance,
9 deductibles for insurance Defendants liability, lease and/or rental fees for
10 vehicles used.
11
12

13 604. Because Defendants made unlawful deductions from Plaintiff's
14 compensation, they are liable to Plaintiff for the compensation that should
15 have been paid but for the unlawful deductions, pursuant to Labor Code §
16 221 and IWC Wage Order No. 9, § 8. dishonest or willful act.
17
18

19 605. Plaintiff request relief as described below.
20
21

22 **COUNT TEN FAILURE TO PROVIDE OFF-DUTY MEAL**
23 **PERIODS**
24

25 (LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 9)
26 Defendants UBER
27
28

1 606. The allegations of each of the preceding paragraphs are realleged and
2 incorporated herein by reference, and Plaintiff alleges as follows.

3
4 607. Plaintiff regularly worked in excess of five (5) hours a day without being
5 afforded at least a 30-minute meal period in which he was relieved of all
6 duties, as required by Labor Code §§ 226.7 and 512, and IWC Wage Order
7 No. 9, § 11(A). Plaintiff also frequently worked in excess of 10 hours in a
8 day without being provided a second 30-minute meal period in which he was
9 relieved of all duties.
10

11
12 608. Because Defendants failed to afford proper meal periods, they are liable to
13 Plaintiff for one hour of additional pay at the regular rate of compensation
14 for each workday that the proper meal periods were not provided, pursuant
15 to Labor Code § 226.7(b) and IWC Wage Order No. 9 § 11(B).
16

17
18 609. Plaintiff request relief as described below.
19

20
21 **COUNT ELEVEN**

22 **FAILURE TO PROVIDE OFF-DUTY PAID REST PERIODS**

23 (LABOR CODE §§ 226.7, IWC WAGE ORDER NO. 9)
24 Defendants UBER
25
26
27
28

1 610. The allegations of each of the preceding paragraphs are realleged and
2 incorporated herein by reference, and Plaintiff alleges as follows.
3

4 611. Plaintiff regularly worked in excess of three and a half hours a day without
5 being afforded at least a paid 10-minute rest period in which he was relieved
6 of all duties, as required by Labor Code §§ 226.7, and IWC Wage Order No.
7 9, § 12(A).
8

9 612. Because Defendants failed to afford proper paid rest periods, they are liable
10 to Plaintiff for one hour of additional pay at the regular rate of compensation
11 for each workday that the proper rest periods were not provided, pursuant to
12 Labor Code § 226.7(b) and IWC Wage Order No. 9, § 12(B).
13
14

15 613. Plaintiffs request relief as described below.
16

17 **COUNT ELEVEN - MINIMUM WAGE**

18 (LABOR CODE §§ 1182.11, 1194, ET SEQ., IWC WAGE ORDER NO. 9,
19 MINIMUM WAGE ORDER)
20 Defendants UBER
21

22 614. The allegations of each of the preceding paragraphs are realleged and
23 incorporated herein by reference, and Plaintiff alleges as follows.
24

25 615. The allegations of each of the preceding paragraphs are realleged and
26 incorporated herein by reference, and Plaintiff alleges as follows:
27
28

1 616. The At all times relevant to this complaint, Labor Code §§ 1182.11, 1182.12
2 and 1197, IWC Wage Order No. 9, and the Minimum Wage Order were in
3 full force and effect and required that Defendants' California nonexempt
4 employees receive the minimum wage for all hours worked irrespective of
5 whether nominally paid on an hourly, piece rate, or any other basis, at the
6 San Francisco rate \$10.74 per hour commencing January 1, 2014, \$11.05 per
7 hour commencing January 1, 2015, and \$12.25 per hour commencing May
8 1, 2015, \$13.00 per hour commencing July 1, 2016, \$14.00 per hour
9 commencing July 1, 2017.
10
11
12

13 617. At various times throughout the relevant liability period, Defendants
14 required Plaintiff to perform various tasks and be subject to Defendants'
15 control without compensation. This uncompensated time included, but was
16 not limited, to time reporting for work "online" each day and waiting for
17 assignments, time performing pre-trip, post-trip and other inspections,
18 waiting for job assignments while in the field and/or waiting to be released
19 from a job location, resulting in Defendants failing to pay minimum wages
20 for all hours worked, as required by law.
21
22
23
24

25 618. As a direct and proximate result of the acts and/or omissions of Defendants,
26 Plaintiff was deprived of minimum wages due in amounts to be determined
27
28

1 at trial, and to additional amounts as liquidated damages, pursuant to Labor
2 Code §§ 1194 and 1194.2.
3

4 619. By violating Labor Code §§ 1182.11, 1182.12 and 1197, IWC Wage Order
5 No. 9, § 4, and the Minimum Wage Order, Defendants are also liable for
6 reasonable attorneys' fees and costs under Labor Code § 1194.
7

8 620. Plaintiff request relief as described below.
9
10
11

12 **COUNT TWELVE - FAILURE TO TIMELY PROVIDE CODE-**
13
14 **COMPLIANT WAGE STATEMENTS**

15 (LABOR CODE § 226) Defendants UBER
16
17

18 621. The allegations of the preceding paragraphs are realleged and incorporated
19 herein by reference, and Plaintiff alleges as follows.
20

21 622. The Defendants, in violation of Labor Code § 226(a), failed to furnish
22 Plaintiff with accurate, itemized wage statements showing all items required
23 pursuant to said code section, including, but not limited to (1) total hours
24 worked, (2) all deductions made, (3) and the name and address of the legal
25 entity that is the employer.
26
27
28

1 623. Plaintiff suffered cognizable legal injuries as a result of said violations, such
2 as (a) confusion over whether Plaintiff received all wages owed them, (b)
3 difficulty and expense involved in reconstructing pay records to compute all
4 pay actually due and owing, and/or (c) the need to make mathematical
5 computations to analyze whether the wages paid in fact compensated
6 Plaintiff properly under the law.
7

8
9 624. Plaintiff requests relief as described below, including damages and/or
10 penalties pursuant to Labor Code §226(e) for each violation by Defendants
11 of Labor Code §226(a) and an award of reasonable attorneys' fees and costs
12 pursuant to Labor Code §226(g).
13
14

15
16 **COUNT THIRTEEN - VIOLATIONS OF THE UNFAIR COMPETITION**
17 **LAW (UCL)**
18

19 (BUSINESS & PROFESSIONS CODE §§ 17200-09)

20 Defendants UBER

21 625. The allegations of each of the preceding paragraphs are realleged and
22 incorporated herein by reference, and Plaintiff alleges as follows.

23 626. The Business & Professions Code § 17200 prohibits unfair competition in
24 the form of any unlawful, unfair, or fraudulent business act or practice.
25
26
27
28

1 627. Business & Professions Code § 17204 allows “any person acting for the
2 interests of itself, its members or the general public” to prosecute a civil
3 action for violation of the UCL.
4

5 628. Defendants improperly, fraudulently, and unlawfully classified Plaintiffs as
6 “independent contractors” and thereby committed unlawful, unfair, and/or
7 fraudulent business acts and practices as defined by Business & Professions
8 Code § 17200, by engaging in the following:
9
10

- 11 a) failing to reimburse Plaintiff for employment-related business
12 expenses and losses;
13
- 14 b) improperly and unlawfully making deductions from Plaintiff’s
15 compensation because of insurance deductions, workmen’s
16 compensation insurance, vehicle lease or rental fees, and other
17 work-related expenses and losses not attributable to Plaintiff’s
18 dishonest or willful act, or to the gross negligence of Plaintiff;
19
- 20 c) failing to provide adequate, off-duty meal periods to Plaintiff and
21 failing to pay the premium pay for missed meal periods;
22
- 23 d) failing to permit and authorize adequate and paid off-duty rest
24 periods to Plaintiff and failing to pay him premium pay for
25 missed/unpaid rest periods;
26
27
28

1 e) failing to pay minimum wage compensation to Plaintiff for all
2 hours worked; and

3
4 f) improperly and unlawfully making deductions from Plaintiff's
5 compensation for work-related expenses and losses not attributable
6 to Plaintiffs' dishonest or willful act or gross negligence, as
7 described above; and,
8

9
10 629. The violations of these laws serve as unlawful, unfair, and/or fraudulent
11 predicate acts and practices, for purposes of Business & Professions Code §
12 17200.
13

14 630. As a direct and proximate result of Defendants' unlawful, unfair, and/or
15 fraudulent acts and practices described herein, Defendants received and
16 continue to hold ill-gotten gains belonging to Plaintiff. As a direct and
17 proximate result of Defendants' unlawful business practices, Plaintiff
18 suffered economic injuries including, but not limited to out-of-pocket
19 business expenses, unlawful deductions from compensation, compensation
20 for missed meal and rest periods, and loss of minimum wages. Defendants
21 have profited from its unlawful, unfair, and/or fraudulent acts and practices
22 in the amount of those business expenses, improper deductions from
23 compensation, unpaid compensation for missed meal and rest periods,
24 unpaid minimum wage, and interest accrued by Plaintiff.
25
26
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28

631. Plaintiff is entitled to restitution pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, unlawful deductions from compensation, missed meal and rest period compensation, and interest since four years prior to the filing of this action.

632. Plaintiff is entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

633. Plaintiff's success in this action will enforce important rights affecting the public interest. In this regard, Plaintiff sues on behalf of the public as well as on behalf of himself and others similarly situated. Plaintiff seeks and is entitled to reimbursement of expenses and unlawful deductions, the unpaid compensation, declaratory relief, and any other appropriate remedy.

634. In order to prevent Defendants from profiting and benefiting from their wrongful and illegal acts and continuing those acts, an order requiring Defendants to restore such moneys in which the Plaintiff has an ownership interest, including fee commissions and the unpaid compensation complained of herein.

635. Plaintiff has assumed the responsibility of enforcement of the laws and lawful claims specified herein. There is a financial burden incurred in pursuing this action which is in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Code of Civil Procedure § 1021.5.

636. By all of the foregoing alleged conduct, Defendants committed unlawful, unfair and fraudulent business practices within the meaning of Business & Professions Code §17200, et seq.

637. As a direct and proximate result of the unfair business practices described above, Plaintiff has suffered significant losses and Defendants have been unjustly enriched.

638. Pursuant to Business & Prof. Code §17203, Plaintiff is entitled to: (a) restitution of money acquired by Defendants by means of their unfair business practices, in amounts not yet ascertained but to be ascertained at trial; and (b) a declaration that Defendants' business practices were unfair within the meaning of the statute.

639. Plaintiff requests relief as described below.

PRAYER FOR RELIEF – DEFENDANTS UBER

WHEREFORE, Plaintiffs request relief against UBER as follows:

A. A declaratory judgment that Defendants knowingly and intentionally violated the following provisions of law:

1. Labor Code § 2802 by failing to indemnify Plaintiff for all necessary business expenses and losses;

2. Labor Code § 221 and IWC Wage Order No. 9 by making

unlawful deductions from the compensation paid to Plaintiff for

1 ordinary business expenses and losses without a showing that
2 the expenses and/or losses were due to Plaintiff's dishonest or
3 willful act, or to the gross negligence of Plaintiff;
4

5 3. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9 by
6 failing to provide adequate, off-duty meal periods to Plaintiff;
7

8 4. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9 by
9 failing to permit and authorize paid, off-duty rest periods to
10 Plaintiff;
11

12 5. Labor Code § 1194, et seq., IWC Wage Order No. 9, and the
13 Minimum Wage Order by failing to pay minimum wage to
14 Plaintiff for all hours worked;
15

16 6. Labor Code § 226 by failing to provide code-compliant wage
17 statements to Plaintiff; and
18

19 7. Business & Professions Code §§ 17200-17208, by failing to
20 reimburse Plaintiff for necessary business expenses, by making
21 wrongful deductions from wages, by failing to provide off-duty
22 meal periods and/or pay missed meal period compensation to
23 Plaintiff, by failing to permit and authorize paid, off-duty, paid
24 rest periods and/or pay missed rest period compensation to
25 Plaintiff, by failing to pay Plaintiff minimum wage under
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27
28

1 California law and by failing to provide Plaintiff with itemized
2 wage statements showing all hours worked;
3

4 B. A declaratory judgment that Defendants' violations as described
5 above were willful;
6

7 C. An equitable accounting to identify, locate, and restore to Plaintiff the
8 wages and unreimbursed expenses that are due;
9

10 D. An award to Plaintiff of damages in the amount of unpaid minimum
11 wage, necessary business expenses, missed meal and rest period
12 compensation, and amounts unlawfully deducted from wages,
13 including interest thereon, subject to proof at trial;
14

15 E. An award to Plaintiff for liquidated damages because of Defendants'
16 failure to pay Plaintiff minimum wage;
17

18 F. An award of damages and/or penalties pursuant to Labor Code
19 §226(e) for each violation by Defendants of Labor Code §226(a);
20

21 G. An order requiring Defendants to pay restitution of all amounts owed
22 to Plaintiff for Defendants' failure to pay legally required meal and
23 rest period pay, minimum wage, and interest thereon and Defendants'
24 failure to repay out-of-pocket business expenses incurred and business
25 expenses unlawfully deducted, and interest thereon, in an amount
26 according to proof, pursuant to Business & Professions Code § 17203.
27
28

1 H. An award to Plaintiff of reasonable attorneys' fees and costs, pursuant
2 to Labor Code §§ 218.5, 226(g), 1194, and 2802, and/or other
3 applicable law; and
4

5 I. An award to Plaintiff such other and further relief as this Court deems
6
7 just and proper.

8 **DEFENDANTS LYFT**

9 **COUNT FOURTEEN – LYFT REIMBURSEMENT OF BUSINESS**

10 **EXPENSES**

11
12 Defendants LYFT - (LABOR CODE § 2802)

13
14 640. The allegations of each of the preceding paragraphs are realleged and
15 incorporated herein by reference, and Plaintiff alleges as follows.

16
17 641. While acting on the direct instruction of Defendants and discharging their
18 duties for them, Plaintiffs incurred work-related expenses. Such expenses
19 included but were not limited to the purchase and/or lease of vehicles; fuel,
20 maintenance, and other vehicle operating costs; costs of replacing and/or
21 upgrading vehicles various forms of insurance; cellular telephone and
22 applications required for receiving dispatch assignments and tracking
23 progress. Plaintiff incurred these substantial expenses and losses as a direct
24 result of performing their job duties for Defendants.
25
26
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28

1 642. Defendants failed to indemnify or in any manner reimburse Plaintiffs for
2 these expenditures and losses. By requiring Plaintiff to pay expenses and
3 cover losses that they incurred in direct consequence of the discharge of
4 their duties for Defendants and/or in obedience of Defendants' direction,
5 Defendants violated Labor Code § 2802.
6
7

8 643. By unlawfully deducting wages and failing to reimburse Plaintiffs,
9 Defendants are also liable for reasonable attorneys' fees and costs under
10 Labor Code § 2802(c).
11

12 644. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered
13 substantial losses according to proof, as well as pre-judgment interest, costs,
14 and attorneys' fees for the prosecution of this action.
15

16 645. Plaintiffs request relief as described below
17
18

19 **COUNT FIFTEEN - UNLAWFUL DEDUCTIONS FROM WAGES**

20 (LABOR CODE § 221 AND IWC WAGE ORDER NO. 9, § 8)

21 Defendants LYFT
22

23
24 646. The allegations of each of the preceding paragraphs are realleged and
25 incorporated herein by reference, and Plaintiff alleges as follows.
26
27
28

1 647. The Labor Code § 221 provides: “It shall be unlawful for any employer to
2 collect or receive from an employee any part of wages theretofore paid by
3 said employer to said employee.”
4

5 648. IWC Wage Order No. 9, § 8 provides that the only circumstance under
6 which an employer can make a deduction from an employee’s wage due to
7 payment shortage, breakage or business loss is if the employer can show that
8 the shortage, breakage, or business loss was the result of the employee’s
9 gross negligence or dishonest or willful act.
10
11

12 649. These and related statutes, along with California’s fundamental public policy
13 protecting wages, prohibit employers from subjecting employees to
14 unanticipated or unpredicted reductions in their wages; making employees
15 the insurers of their employer’s business losses; otherwise passing the
16 ordinary business losses of the employer onto the employee; or taking
17 deductions from wages for business losses in any form unless the employer
18 can establish that the loss was caused by a dishonest or willful act, or gross
19 negligence of the employee.
20
21
22

23 650. Defendants violated Labor Code § 221 and IWC Wage Order No.9, § 8 by
24 unlawfully taking deductions from Plaintiff’s compensation to cover certain
25 ordinary business expenses of Defendants, including but not limited to,
26 deducting fee commissions for the unauthorized sales and arranging of
27
28

1 passenger transportation, charges for Workmen's Compensation Insurance,
2 deductibles for insurance Defendants liability, lease and/or rental fees for
3 vehicles used.
4

5 651. Because Defendants made unlawful deductions from Plaintiff's
6 compensation, they are liable to Plaintiff for the compensation that should
7 have been paid but for the unlawful deductions, pursuant to Labor Code §
8 221 and IWC Wage Order No. 9, § 8. dishonest or willful act.
9

10
11 652. Plaintiff request relief as described below.
12

13
14 **COUNT SIXTEEN - FAILURE TO PROVIDE OFF-DUTY MEAL**
15 **PERIODS**

16 (LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 9)
17 Defendants LYFT
18

19
20 653. The allegations of each of the preceding paragraphs are realleged and
21 incorporated herein by reference, and Plaintiff alleges as follows.

22 654. Plaintiff regularly worked in excess of five (5) hours a day without being
23 afforded at least a 30-minute meal period in which he was relieved of all
24 duties, as required by Labor Code §§ 226.7 and 512, and IWC Wage Order
25 No. 9, § 11(A). Plaintiff also frequently worked in excess of 10 hours in a
26
27
28

1 day without being provided a second 30-minute meal period in which he was
2 relieved of all duties.

3
4 655. Because Defendants failed to afford proper meal periods, they are liable to
5 Plaintiff for one hour of additional pay at the regular rate of compensation
6 for each workday that the proper meal periods were not provided, pursuant
7 to Labor Code § 226.7(b) and IWC Wage Order No. 9 § 11(B).

8
9 656. Plaintiff request relief as described below.
10
11

12 **COUNT SEVENTEEN - FAILURE TO PROVIDE OFF-DUTY PAID**

13 **REST PERIODS**

14
15 (LABOR CODE §§ 226.7, IWC WAGE ORDER NO. 9)
16 Defendants LYFT
17

18 657. The allegations of each of the preceding paragraphs are realleged and
19 incorporated herein by reference, and Plaintiff alleges as follows.

20
21 658. Plaintiff regularly worked in excess of three and a half hours a day without
22 being afforded at least a paid 10-minute rest period in which he was relieved
23 of all duties, as required by Labor Code §§ 226.7, and IWC Wage Order No.
24 9, § 12(A).

25
26 659. Because Defendants failed to afford proper paid rest periods, they are liable
27 to Plaintiff for one hour of additional pay at the regular rate of compensation
28

1 for each workday that the proper rest periods were not provided, pursuant to
2 Labor Code § 226.7(b) and IWC Wage Order No. 9, § 12(B).
3

4 660. Plaintiffs request relief as described below.

5 **COUNT EIGHTEEN - MINIMUM WAGE**

6 (LABOR CODE §§ 1182.11, 1194, ET SEQ., IWC WAGE ORDER NO. 9,
7 MINIMUM WAGE ORDER)

8 Defendants LYFT
9

10 661. The allegations of each of the preceding paragraphs are realleged and
11 incorporated herein by reference, and Plaintiff alleges as follows.
12

13 662. The allegations of each of the preceding paragraphs are realleged and
14 incorporated herein by reference, and Plaintiff alleges as follows:
15

16 663. The At all times relevant to this complaint, Labor Code §§ 1182.11, 1182.12
17 and 1197, IWC Wage Order No. 9, and the Minimum Wage Order were in
18 full force and effect and required that Defendants' California nonexempt
19 employees receive the minimum wage for all hours worked irrespective of
20 whether nominally paid on an hourly, piece rate, or any other basis, at the
21 San Francisco rate \$10.74 per hour commencing January 1, 2014, \$11.05 per
22 hour commencing January 1, 2015, and \$12.25 per hour commencing May
23 1, 2015, \$13.00 per hour commencing July 1, 2016, \$14.00 per hour
24 commencing July 1, 2017.
25
26
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28

1 664. At various times throughout the relevant liability period, Defendants
2 required Plaintiff to perform various tasks and be subject to Defendants'
3 control without compensation. This uncompensated time included, but was
4 not limited, to time reporting for work "online" each day and waiting for
5 assignments, time performing pre-trip, post-trip and other inspections,
6 waiting for job assignments while in the field and/or waiting to be released
7 from a job location, resulting in Defendants failing to pay minimum wages
8 for all hours worked, as required by law.
9

10
11
12 665. As a direct and proximate result of the acts and/or omissions of Defendants,
13 Plaintiff was deprived of minimum wages due in amounts to be determined
14 at trial, and to additional amounts as liquidated damages, pursuant to Labor
15 Code §§ 1194 and 1194.2.
16

17
18 666. By violating Labor Code §§ 1182.11, 1182.12 and 1197, IWC Wage Order
19 No. 9, § 4, and the Minimum Wage Order, Defendants are also liable for
20 reasonable attorneys' fees and costs under Labor Code § 1194.
21

22 667. Plaintiff request relief as described below.
23
24
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**COUNT NINETEEN - FAILURE TO TIMELY PROVIDE CODE-
COMPLIANT WAGE STATEMENTS**

(LABOR CODE § 226) Defendants LYFT

668. The allegations of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows.

669. The Defendants, in violation of Labor Code § 226(a), failed to furnish Plaintiff with accurate, itemized wage statements showing all items required pursuant to said code section, including, but not limited to (1) total hours worked, (2) all deductions made, (3) and the name and address of the legal entity that is the employer.

670. Plaintiff suffered cognizable legal injuries as a result of said violations, such as (a) confusion over whether Plaintiff received all wages owed them, (b) difficulty and expense involved in reconstructing pay records to compute all pay actually due and owing, and/or (c) the need to make mathematical computations to analyze whether the wages paid in fact compensated Plaintiff properly under the law.

671. Plaintiff requests relief as described below, including damages and/or penalties pursuant to Labor Code §226(e) for each violation by Defendants

1 of Labor Code §226(a) and an award of reasonable attorneys' fees and costs
2 pursuant to Labor Code §226(g).
3

4
5 **COUNT TWENTY - VIOLATIONS OF THE UNFAIR COMPETITION**
6 **LAW (UCL)**

7 (BUSINESS & PROFESSIONS CODE §§ 17200-09)

8 Defendants LYFT

9 672. The allegations of each of the preceding paragraphs are realleged and
10 incorporated herein by reference, and Plaintiff alleges as follows.
11

12 673. The Business & Professions Code § 17200 prohibits unfair competition in
13 the form of any unlawful, unfair, or fraudulent business act or practice.
14

15 674. Business & Professions Code § 17204 allows "any person acting for the
16 interests of itself, its members or the general public" to prosecute a civil
17 action for violation of the UCL.
18

19 675. Defendants improperly, fraudulently, and unlawfully classified Plaintiffs as
20 "independent contractors" and thereby committed unlawful, unfair, and/or
21 fraudulent business acts and practices as defined by Business & Professions
22 Code § 17200, by engaging in the following:
23

- 24 a) failing to reimburse Plaintiff for employment-related business
25 expenses and losses;
26
27
28

- b) improperly and unlawfully making deductions from Plaintiff's compensation because of insurance deductions, workmen's compensation insurance, vehicle lease or rental fees, and other work-related expenses and losses not attributable to Plaintiff's dishonest or willful act, or to the gross negligence of Plaintiff;
- c) failing to provide adequate, off-duty meal periods to Plaintiff and failing to pay the premium pay for missed meal periods;
- d) failing to permit and authorize adequate and paid off-duty rest periods to Plaintiff and failing to pay him premium pay for missed/unpaid rest periods;
- e) failing to pay minimum wage compensation to Plaintiff for all hours worked; and
- f) improperly and unlawfully making deductions from Plaintiff's compensation for work-related expenses and losses not attributable to Plaintiffs' dishonest or willful act or gross negligence, as described above; and,

676. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and practices, for purposes of Business & Professions Code § 17200.

1 677. As a direct and proximate result of Defendants' unlawful, unfair, and/or
2 fraudulent acts and practices described herein, Defendants received and
3 continue to hold ill-gotten gains belonging to Plaintiff. As a direct and
4 proximate result of Defendants' unlawful business practices, Plaintiff
5 suffered economic injuries including, but not limited to out-of-pocket
6 business expenses, unlawful deductions from compensation, compensation
7 for missed meal and rest periods, and loss of minimum wages. Defendants
8 have profited from its unlawful, unfair, and/or fraudulent acts and practices
9 in the amount of those business expenses, improper deductions from
10 compensation, unpaid compensation for missed meal and rest periods,
11 unpaid minimum wage, and interest accrued by Plaintiff.
12
13 678. Plaintiff is entitled to restitution pursuant to Business & Professions Code §§
14 17203 and 17208 for all unpaid business expenses, unlawful deductions
15 from compensation, missed meal and rest period compensation, and interest
16 since four years prior to the filing of this action.
17
18 679. Plaintiff is entitled to enforce all applicable penalty provisions of the Labor
19 Code pursuant to Business & Professions Code § 17202.
20
21 680. Plaintiff's success in this action will enforce important rights affecting the
22 public interest. In this regard, Plaintiff sues on behalf of the public as well as
23 on behalf of himself and others similarly situated. Plaintiff seeks and is
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1 entitled to reimbursement of expenses and unlawful deductions, the unpaid
2 compensation, declaratory relief, and any other appropriate remedy.

3
4 681. In order to prevent Defendants from profiting and benefiting from their
5 wrongful and illegal acts and continuing those acts, an order requiring
6 Defendants to restore such moneys in which the Plaintiff has an ownership
7 interest, including fee commissions and the unpaid compensation
8 complained of herein.
9

10
11 682. Plaintiff has assumed the responsibility of enforcement of the laws and
12 lawful claims specified herein. There is a financial burden incurred in
13 pursuing this action which is in the public interest. Therefore, reasonable
14 attorneys' fees are appropriate pursuant to Code of Civil Procedure § 1021.5.
15

16 683. By all of the foregoing alleged conduct, Defendants committed unlawful,
17 unfair and fraudulent business practices within the meaning of Business &
18 Professions Code §17200, et seq.
19

20
21 684. As a direct and proximate result of the unfair business practices described
22 above, Plaintiff has suffered significant losses and Defendants have been
23 unjustly enriched.
24

25 685. Pursuant to Business & Prof. Code §17203, Plaintiff is entitled to: (a)
26 restitution of money acquired by Defendants by means of their unfair
27 business practices, in amounts not yet ascertained but to be ascertained at
28

1 trial; and (b) a declaration that Defendants' business practices were unfair
2 within the meaning of the statute.

3
4 686. Plaintiff requests relief as described below.

5 **PRAYER FOR RELIEF – DEFENDANTS LYFT**

6
7 WHEREFORE, Plaintiffs request relief against LYFT as follows:

8 A. A declaratory judgment that Defendants knowingly and intentionally
9 violated the following provisions of law:

- 10
11 1. Labor Code § 2802 by failing to indemnify Plaintiff for all
12 necessary business expenses and losses;
- 13
14 2. Labor Code § 221 and IWC Wage Order No. 9 by making
15 unlawful deductions from the compensation paid to Plaintiff for
16 ordinary business expenses and losses without a showing that
17 the expenses and/or losses were due to Plaintiff's dishonest or
18 willful act, or to the gross negligence of Plaintiff;
- 19
20 3. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9 by
21 failing to provide adequate, off-duty meal periods to Plaintiff;
- 22
23 4. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9 by
24 failing to permit and authorize paid, off-duty rest periods to
25 Plaintiff;
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1 5. Labor Code § 1194, et seq., IWC Wage Order No. 9, and the
2 Minimum Wage Order by failing to pay minimum wage to
3 Plaintiff for all hours worked;

4
5 6. Labor Code § 226 by failing to provide code-compliant wage
6 statements to Plaintiff; and

7
8 7. Business & Professions Code §§ 17200-17208, by failing to
9 reimburse Plaintiff for necessary business expenses, by making
10 wrongful deductions from wages, by failing to provide off-duty
11 meal periods and/or pay missed meal period compensation to
12 Plaintiff, by failing to permit and authorize paid, off-duty, paid
13 rest periods and/or pay missed rest period compensation to
14 Plaintiff, by failing to pay Plaintiff minimum wage under
15 California law and by failing to provide Plaintiff with itemized
16 wage statements showing all hours worked;

17
18
19
20 B. A declaratory judgment that Defendants' violations as described
21 above were willful;

22
23 C. An equitable accounting to identify, locate, and restore to Plaintiff the
24 wages and unreimbursed expenses that are due;

25
26 D. An award to Plaintiff of damages in the amount of unpaid minimum
27 wage, necessary business expenses, missed meal and rest period
28

1 compensation, and amounts unlawfully deducted from wages,
2 including interest thereon, subject to proof at trial;
3

4 E. An award to Plaintiff for liquidated damages because of Defendants'
5 failure to pay Plaintiff minimum wage;
6

7 F. An award of damages and/or penalties pursuant to Labor Code
8 §226(e) for each violation by Defendants of Labor Code §226(a);
9

10 G. An order requiring Defendants to pay restitution of all amounts owed
11 to Plaintiff for Defendants' failure to pay legally required meal and
12 rest period pay, minimum wage, and interest thereon and Defendants'
13 failure to repay out-of-pocket business expenses incurred and business
14 expenses unlawfully deducted, and interest thereon, in an amount
15 according to proof, pursuant to Business & Professions Code § 17203.
16

17 H. An award to Plaintiff of reasonable attorneys' fees and costs, pursuant
18 to Labor Code §§ 218.5, 226(g), 1194, and 2802, and/or other
19 applicable law; and
20

21 I. An award to Plaintiff such other and further relief as this Court deems
22 just and proper.
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COMMON COUNTS - DEFENDANTS UBER AND LYFT

COUNT TWENTY-ONE –

CALIFORNIA UNFAIR PRACTICES ACT

(California Business and Professions Code §§17043, 17044)

(Defendants Uber and Lyft)

687. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows.

688. Defendants Uber and Lyft sold, and continue to sell and arrange, federally unauthorized and preempted passenger transportation services to private vehicles for compensation as a business or occupation below cost and on a loss leader basis in violation of Cal. Bus. & Prof. Code §§ 17043, 17044.

689. Defendants' Uber and Lyft sell and arrange passenger transportation which activity is defined under federal law as *passenger broker* and *motor carrier* activity or conduct requiring compliance with federal broker and motor carrier laws and regulations. The defendants have no passenger broker or motor carrier compliance with the Federal Motor Carrier Safety Administration.

690. Defendants' rates are not set or regulated by, the California Public Utilities Commission, "CPUC." Federal law does not regulate the Defendants rates.

1 691. Federal authority over intrastate transportation preempts (prohibits) States
2 and their agencies from regulating the rates of passenger motor carriers
3 under 49 U.S.C. §14501(a) while allowing States to require a notice, not in
4 excess of 30 days of any change in rates.
5

6 692. The CPUC has no authority to establish or usurp federal law and is
7 preempted (prohibited) by federal authority over intrastate transportation
8 under 49 U.S.C. §14501(b)(1) from enacting or creating any provision
9 having the force and effect of law related to ANY passenger intrastate
10 broker's, intrastate rates, intrastate routes, or intrastate services.
11

12 693. The defendants maintain unlawful Agreements or contracts or "Terms of
13 Service," with their California TNC drivers unilaterally maintaining a
14 horizontal agreement to fix prices with and among their hundreds of
15 thousands of "independent contractor" driver tradesmen creating an unfair
16 loss leader barrier with overwhelming force injuring Plaintiff's ability to
17 legally compete in the San Francisco Bay area and California market.
18

19 694. Plaintiff is informed and believes and thereon alleges that the directors and
20 officers of Uber at the time of the above-referenced violations included the
21 following persons: Dara Khosrowshahi, Travis Kalanick, Garrett Camp,
22 John Thain, Ursula Burns, Wan Ling Martello, Yasir Al Rumayyan, Matt
23 Cohler, David Trujillo, Ryan Graves, Arianna Huffington, and Ronald Sugar
24
25
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(chair), Tony West (General Counsel). Additionally, Dara Khosrowshahi is the current CEO of Uber; Travis Kalanick is a co-founder of Uber, and formerly served as Uber's CEO; Garrett Camp is a co-founder of Uber.

695. Plaintiff is informed and believes and thereon alleges that the directors and officers of Lyft at the time of the above-referenced violations included the following persons: Logan Green, CEO, John Zimmer, President, Sean Aggarwal, Chairman, Ben Horowitz, Valerie Jarrett, Hiroshi, Ann Miura-KO, Maggie Wilderotter and Anthony Foxx

696. Defendants performed the above-mentioned acts for the purpose of operating a federally prohibited business or occupation, below cost destroying competition and injuring Plaintiff a lawful TCP licensed operator and other competing drivers.

697. As a direct result of the above-mentioned acts of Defendants, Plaintiff has been deprived of the patronage of a large number of the actual and potential customers. Defendant's conduct has in fact proximately caused damages to Plaintiff in an amount to be proved at trial.

698. Unless restrained, Defendant will continue to contract with riders on a loss leader basis.

PRAYER FOR RELIEF – UBER AND LYFT UPA CLAIM

WHEREFORE, Plaintiff request COUNT TWENTY-ONE relief as follows:

- a) Plaintiff requests that the Court enter declaratory relief and adjudging that Uber and Lyft violated the law as alleged in the complaint;
- b) That Uber and Lyft be enjoined and restrained from in any manner continuing, maintaining, or renewing its unlawful and anticompetitive conduct or adopting or following any practice, plan, program, or device with a similar purpose or effect;
- c) That Plaintiff is awarded damages and treble damages under the Unfair Practices Act.
- d) That Plaintiff, be awarded reasonable attorney's fees and costs, including expert costs, as allowable under law; and
- e) All other relief to which Plaintiff be entitled at law or in equity including injunctive relief as the Court may deem just and proper.

COUNT TWENTY-TWO – BREACH OF CONTRACT

699. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff re-alleges as follows.

1 700. The Plaintiff alleges that the defendants Uber and Lyft contracts violate
2 federal transportation laws. The defendants are violating both the regulatory
3 scheme and providing a passenger transportation service specifically
4 prohibited by federal law and are per se unlawful.
5

6 701. Plaintiff lawfully provided passenger service to Defendants under his TCP
7 permit, with commercial passenger vehicle registration and State passenger
8 authority and State approved commercial insurance.
9
10

11 702. Contracts for an illegal purpose are illegal agreements, under the common
12 law of contract, and are contracts which courts will not enforce because the
13 purpose of the agreement is to achieve an illegal end.
14

15 703. The Defendants Uber and Lyft's illegal end in this case is the sale, selling or
16 arranging of passenger transportation to private vehicles for compensation
17 violating 49 U.S.C. 13506(b)(2) and 49 CFR §372.101.
18

19 704. Defendants Uber and Lyft misrepresented their lawful authority to arrange,
20 *broker* or sell passenger transportation which they knew or should have
21 known was false, in that their conduct was violative of current federal
22 prohibitions and could, would and did lead to criminal and civil mayhem as
23 it had in the past. The very reason Congress and its agencies removed in
24 1942 the exemption and Congress permanently removed the exemption in its
25 1995 amendment of the Motor Carrier Act.
26
27
28

1 705. The Defendants improper lobbying influence over State and local political
2 bodies and the results of their efforts as reported by the media, bolstered the
3 misrepresentation of their transportation authority to offer, arrange and sell
4 transportation to the drivers who, like Plaintiff were justifiably misled by the
5 Defendants conduct. The drivers' especially Plaintiff who was properly
6 licensed had every reason to believe the defendants' misrepresentations were
7 true.
8
9
10

11 706. The truth is the defendant Travis Kalanick knew or should have known his
12 company Uber's representations were false because he published a White
13 Policy paper acknowledging the competition, one of which was defendant
14 Lyft selling, arranging and dispatching passenger transportation to private
15 vehicles, which he called a "new technology called ridesharing."
16
17

18 707. Likewise Defendant Lyft knew or should have known that ridesharing was
19 unlawful because it sold off its "Zimride" legal ride sharing business to the
20 Enterprise Car Rental company. Zimride did not sell passenger
21 transportation to private vehicles; it provided web based "public billboards"
22 which in great part allowed for college students to be able to arrange their
23 own private agreements to share rides. Zimride's revenue came from
24 organizations, including Universities who paid for the bill board service to
25 be provided.
26
27
28

1 708. The Defendants have breached the contract with the Plaintiff because they
2 do not have and have never had, nor could they secure federal authority or
3 legal State authority to arrange, broker or sell passenger transportation to
4 private vehicles for compensation as an occupation or business, 49 U.S.C.
5 §13506(b)(2) and 49 CFR §372.101 . Defendants can never secure federal
6 authority because federal law prohibits the defendants conduct as described
7 throughout Plaintiff's complaint.
8
9
10

11 709. Defendant Uber USA, LLC., has specifically breached their contract with
12 Plaintiffs because Uber Technology, Inc.'s subsidiary Rasier-CA, LLC.,
13 placed unlawful competition directly against Plaintiff's legal TCP operated
14 business and forced Plaintiff to sell his services for below cost passenger
15 fare pricing in his futile effort to avoid insolvency.
16
17

18 710. Defendant Rasier-CA, LLC breached its contract with Plaintiff because it has
19 never had legal State or any federal authority to arrange, broker or sell
20 transportation and could never secure federal or legal State authorization for
21 conduct specifically prohibited under federal law 49 U.S.C. §13506(b)(2)
22 and 49 CFR §372.101.
23
24

25 711. The defendant Lyft, Inc., breached its contract with Plaintiff because it has
26 never had legal State or any federal authority to arrange, broker or sell
27 transportation and could never secure federal or legal State authorization for
28

1 conduct specifically prohibited under federal law 49 U.S.C. §13506(b)(2)
2 and 49 CFR §372.101.
3

4 **COUNT TWENTY-THREE QUANTUM MERUIT**

5 **UNJUST ENRICHMENT**

6
7 712. The allegations of each of the preceding paragraphs are realleged and
8 incorporated herein by reference, and Plaintiff alleges as follows.

9
10 713. The Defendant Uber Technologies, Inc., is the controlling parent of its
11 subsidiaries, Uber USA, LLC and Rasier-CA, LLC, and on information ad
12 belief took fee commissions, from Plaintiff's passenger fares, on behalf of its
13 subsidiaries for the unauthorized conduct of its subsidiaries and has been
14 unjustly enriched.
15

16 714. The Plaintiff contends that Defendants' Uber and Lyft never had a valid
17 written contract because their contracts were for an illegal purpose. Plaintiff
18 claims he is therefore entitled to a claim for quantum meruit for unjust
19 enrichment for Defendants retention of fee commissions, minimum wages
20 and overtime, vehicle costs and vehicle expenses, and insurance deductibles.
21 Plaintiff is entitled to reimbursement, disgorgement and restitution, lest
22 Defendants be rewarded for their unlawful conduct.
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COUNT TWENTY-FOUR CONVERSION

715. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows.

716. Defendants Uber and Lyft intentionally and unlawfully took Plaintiffs' property, namely fee commissions and money for expenses, without legal authority, for an unlawful purpose or Plaintiffs' permission.

717. The Defendant's conduct, as set forth above, substantially interfered with Plaintiffs' property.

718. As a result, Plaintiff was harmed and is entitled to restitution for his full share of proceeds for his lawful conduct.

719. The Defendants Uber and Lyft's conduct was willful wanton, malicious, and oppressive, and further justifies the awarding of exemplary damages.

COUNT TWENTY-FIVE - CONSTRUCTIVE FRAUD

720. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows.

721. Defendants Uber and Lyft made false representations, that they were authorized by law to arrange, broker and sell passenger transportation, which Defendants knew was a false representation at the time, that Plaintiffs would

1 receive passenger fares, provide a vehicle, expenses and labor, which
2 Defendants intended to defraud of their true value, which Plaintiff justifiably
3 relied upon, causing Plaintiff to incur damages.
4

5
6
7 **COUNT TWENTY-SIX - Untrue or Misleading Advertising—**

8 **Business and Professions Code § 17500**

9
10 722. The allegations of each of the preceding paragraphs are realleged and
11 incorporated herein by reference, and Plaintiff alleges as follows.

12 723. The Defendants intended to perform transportation services.

13
14 724. Defendants Uber and Lyft arrange, broker and sell passenger transportation

15 725. Defendant disseminated advertising before the public in California that:

- 16 a) contained statements that were illegal, untrue or misleading;
17
18 b) Defendant knew, or in the exercise of reasonable care should have
19 known, was illegal, untrue or misleading;
20
21 c) concerned the personal property or services or their disposition or
22 performance; and
23
24 d) was likely to mislead or deceive a reasonable consumer and
25 Plaintiff. The illegal, untrue and/or misleading statements and
26 representations made by Defendants include but are not limited to:
27
28

- i. Words stating or implying that Defendants were authorized to provide, arrange or sell passenger transportation for compensation,
- ii. to provide safe transportation, to provide proper or responsible insurance when in fact they were not authorized to provide, arrange, sell offer, hold themselves out as an authorized transportation business, because they did not have federally authorization to arrange offer or sell transportation for compensation, they did not hold sufficient or federally required insurance,
- iii. that drivers could earn money without explaining the true costs and true net earnings.

PRAYER FOR RELIEF – UBER AND LYFT COUNTS 22, 23, 24, 25, 26

WHEREFORE, Plaintiff request relief equitable and legal relief and damages for Breach of Contract, Quantum Meruit, Conversion, Fraud, and Misleading Advertising, as follows:

1. Plaintiff requests that the Court enter declaratory and injunctive relief and adjudging:

- 1 A. that Uber and Lyft violated California law Business and Professions
2 Code §17500 by misleading consumer and driver Plaintiff to his
3 injury;
- 4 B. That Defendant made false representations at the time with the intent
5 to defraud Plaintiff of his property for their own purposes which
6 Plaintiff justifiably relied on, causing Plaintiff's damages.
- 7 C. That Defendants Uber and Lyft breached the contract with Plaintiff,
8 by misleading Plaintiff of the unlawful purpose of the contract to
9 evade and avoid federal transportation prohibitions, laws and
10 regulations;
- 11 D. That defendants breached the contract is for performing services as a
12 business which is prohibited or requires mandatory compliance with
13 federal law which Defendants do not have rendering it a contract for
14 unlawful purposes unenforceable by a Court of law
- 15 E. That because the Defendants unilaterally created contracts are for an
16 unlawful purpose, Plaintiff is entitled to recover for his lawful labor
17 property and expenses lest Defendants be unjustly enriched for their
18 unlawful purposes.
- 19 F. That Defendants intentionally and unlawfully took Plaintiff's
20 property, namely, fee commissions, the value of vehicle, money for
21 expenses, lease or rental vehicle fees, Workmen's compensation,
22 wages, overtime, and insurance deductibles, smartphone and services.
- 23 G. That Plaintiff was harmed and is entitled to the restoration of his
24 property and money by disgorgement, and reimbursement.
- 25
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1 H. That Defendants conduct was willful, wanton, malicious, or
2 oppressive, and further justifies the awarding of exemplary and
3 punitive damages.

4 I. Such other and further relief as the Court deems proper.
5

6
7 **COUNT TWENTY-SEVEN – LEGAL MALPRACTICE**

8 (Legal Malpractice against Defendants Lichten & Liss-Riordan P.C, Shannon Liss-
9 Riordan, Adelaide Pagano, Anne Kramer)
10

11
12 726. The allegations of each of the preceding paragraphs are realleged and
13 incorporated herein by reference, and Plaintiff alleges as follows.
14

15 727. Defendants and each of them had a duty to use such skill, prudence, and
16 diligence as members of the legal profession commonly possesses and
17 exercises, in providing legal services to Plaintiff herein.
18

19 728. The conduct of the Defendants, and each of them, in doing the acts and
20 omissions herein alleged directly resulted in damages and harm to Plaintiff
21 as set out herein.
22

23 729. In doing the things herein alleged, Defendants intentionally put their own
24 financial interests and the gain realized by a full blown litigation of the
25 O'Connor v. Uber case, ahead of the interests of their client in avoiding
26 litigation and the attendant legal fees by failing to raise Plaintiff's (and the
27
28

1 other drivers) statutory right to be exempt from arbitration potentially
2 avoiding 6 years of litigation. As a direct and proximate result of Defendants
3 actions, as alleged herein, Plaintiff incurred substantial adverse court
4 decisions, unnecessary class counsel attorney's fees and costs, loss of his
5 property, labor, and rights, all subject to proof.
6
7
8

9 730. The relationship between Plaintiff and Defendants Uber and Lyft was a
10 critical issue which should have been the subject of thorough discovery and
11 investigation given the magnitude of the numbers of drivers, (some 300,000)
12 in lost labor and expenses and tips claims. A number that has grown above a
13 billion dollars against Defendant Uber alone. Defendants however failed to
14 adequately or even bother do either.
15
16
17

18 731. In doing all of the above described acts and omissions, Defendants, and each
19 of them, repeatedly and intentionally put their own financial interests ahead
20 of the interests of their client in avoiding any effective full blown arbitration
21 and transportation litigation case. It should be well known to the Defendant
22 attorneys that there are considerable cross related transportation and labor
23 issues which effect employees and independent contractors alike. Both the
24 U.S. Secretary of Labor and the U.S. Secretary of Transportation have
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1 jurisdiction over transportation workers, their safety and hours requiring
2 some relevant inquiry.

3
4 732. The FMCSA has attorneys on staff to answer questions, at no charge,
5 regarding what is and is not interstate commerce and what intrastate
6 commerce is also “part of interstate commerce and federally regulated, yet
7 not once did the Defendants raise interstate commerce or exemption, but
8 their billing grew by the days weeks, months and years.

9
10
11 733. Defendants, and each of them, failed to exercise reasonable care and skill in
12 their representation of Plaintiff by negligently and carelessly doing all of the
13 acts and omissions as herein alleged. Among other things, Defendants failed
14 to exercise reasonable care and skill and were negligent in failing to properly
15 prepare for, present, and preserve Plaintiff’s (and the other drivers)
16 exemption from arbitration in 6 years of district court hearings and multiple
17 appeals, they did in their other cases and even into the appellate courts, why
18 not for this Plaintiff, and the previously approved other hundreds of
19 thousands of members of the class, the failure is a catastrophic disaster, and
20 injuring Plaintiff’s right to have the force and weight of the members to
21 bring about justice and preserve rights;

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26 734. Defendants are attorneys who have the experience to bring Declaratory and
27 Injunctive relief actions, their failure to raise the illegal conduct of Uber and
28

1 Lyft who operate a business, arranging and selling passenger transportation
2 to private vehicles for compensation as a regular business, which is
3 specifically prohibited by federal law, 49 U.S.C. §13506(b)(2) and clearly
4 spelled out in the operating regulation, 49 CFR§372.101, could have brought
5 both Uber and Lyft to a complete stop of their abusive labor practices.
6
7

8 735. The worst part is that since 2013 and continuing to this day, 9 drivers have
9 been driven into insolvency and committed suicide, the media reports, more
10 than 100 women have been raped or sexually assaulted, and uncountable
11 assaults have occurred. The Uber and Lyft business is per se illegal. The
12 Defendant attorneys' are silent!
13
14

15 736. The Defendant attorneys have no reasonable justification for failing to use
16 well published laws and superior court authorities, and free federal
17 government FMCSA resources, and the transportation law's provisions for
18 legal fees to enforce federal laws, like 49 U.S.C. §14704 to stop the
19 unauthorized and illegal Uber and Lyft business operations, which abuse
20 their labor force.
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COUNT TWENTY-EIGHT – Breach of Fiduciary Duty

(Breach of Fiduciary Duty against Defendants Lichten & Liss-Riordan P.C,
Shannon Liss-Riordan, Adelaide Pagano, Anne Kramer)

737. Defendants, and each of them, owed Plaintiff, an unnamed member of the class action case O'Connor v, Uber, case #13-cv-03826-EMC, a fiduciary duty to act at all times in good faith and in Plaintiff's best interests, and had a duty, among other things, to perform the services for which they assumed as class counsel with reasonable care and skill, to act in Plaintiff's highest and best interests at all times, and to not expose Plaintiff to any unnecessary risk or peril. This fiduciary and confidential relationship was never repudiated by Defendants at any time herein mentioned.

738. Defendants, and each of them, had a duty to use such skill, prudence, and diligence as members of the legal profession commonly possess and exercise, in providing legal services to Plaintiff herein.

739. Defendants failed to use care or honor their fiduciary duty to the Plaintiff. This case involves transportation workers arguably regulated by federal transportation law. All drivers, (TNC or TCP) including the Plaintiff are drivers which California calls prearranged transportation providers, and so

1 too does federal law call it prearranged transportation under 49 U.S.C.
2 §14501(d).
3

4 740. The drivers are driving all around the country in 2013, crossing State lines,
5 with Uber in 2016 offering nationally advertised ABC, NBC, CBS, coverage
6 of an Uber Passport passenger service from San Diego, CA across the U.S.-
7 Mexican border, which is federally regulated transportation in foreign
8 commerce, all of which require compliance with federal transportation law.
9 Plaintiff and other drivers were entitled to have the federal laws enforced as
10 well as the related labor issues. The Defendants however did nothing.
11

12 741. Plaintiff even had email communications directly with Defendant Shannon
13 Liss-Riordan explaining the interstate nature of the drivers work. This
14 included, his own work entirely within California that is “part of the flow of
15 interstate commerce” and should result in exemption from arbitration.
16 Plaintiff used information he secured from the FMCSA to report these
17 findings to Ms. Liss-Riordan. Ms. Liss-Riordan responded to Plaintiff with
18 cases that appeared to be contrary authority, which were in fact clearly
19 distinguishable to a layman.
20

21 742. The Defendants have other very similar labor cases, regarding employee
22 versus independent contractor disputes and adhesive arbitration contracts, in
23 courts around the United States.
24

1 743. The Defendants raised “exemption from arbitration” in at least 5 of those
2 cases for drivers who deliver food, packages, courier and janitor services,
3 none of which is directly regulated by federal law, as Plaintiff (and the other
4 drivers) performing passenger transportation are, yet they raised the issue in
5 those cases and appealed them to the appropriate appellate court.
6

7
8 744. In this case, there is one important federal law 49 U.S.C. §13506(b)(2) with
9 its supporting regulation 49 CFR §372.101 and one U.S. Supreme Court
10 case, from 1949 and still standing California v. Zook, 336 U.S. 725 (1949)
11 easily accessible which would have been all Defendants needed to secure
12 direct relief for the drivers and Plaintiff they represent.
13
14

15 745. Even better within California v. Zook, are several references to California v.
16 Thompson, 313 U.S. 109 (1941) that would have explained why California’s
17 2013 CPUC enactment of a TNC permit and the California’s 2014
18 legislation supporting the CPUC DECISION were ripe for preemption. This
19 would or could have stopped the illegal passenger transportation of Uber and
20 Lyft in their tracks, years ago.
21
22

23 746. Yet, Defendants never even tried, in any form, and in fact showed a
24 surprising lack of candor before every Court they appeared in for the
25 O’Connor class by not raising the exemption to arbitration that Congress
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27
28

provided. Plaintiff himself was forced to opt-out from an unlawful arbitration contract of Defendants Uber and Lyft.

747. In January 2019, the U.S. Supreme Court decided New Prime v. Oliveira, 585 U.S. ____ (Jan. 2019) which the Defendants cited in their briefs in their other cases, yet again with a pending motion to compel by Uber still waiting for a determination, in the O'Connor case, which Plaintiff is a member, they did nothing.

748. The significance of New Prime is that it clarified in a unanimous 8-0 decision that any class of workers included "independent contractors" as well as employees. Still nothing from the Defendants and the motion to compel remains pending. Uber's counsel Mr. Theodore Boutrous, in the O'Connor case argued the New Prime case before the U.S. Supreme Court, yet he has not withdrawn his improper motion to compel arbitration. The defendants have done nothing!

749. The Defendants have caused several adverse decisions in the district court, caused the district court to decide issues without all the readily available known facts within the Defendants possession or available without legal discovery, including one adverse decision in the Ninth Circuit Court of Appeals, in Mohamed v. Uber, 848 F.3d 1201 (9th Cir. 2016). Damaging Plaintiff ability to a recovery for his injuries.

1 750. The fact is anyone using the Uber or Lyft smartphone application can order a
2 car to take them as far as the limits of their credit card will allow. This
3 combined with the fact that everyone knows that Uber and Lyft operate in all
4 48 States is enough proof that Uber and Lyft are operating and providing
5 interstate transportation to warrant limited discovery as to for example how
6 many Uber and Lyft cars travel from Los Angeles, CA to Las Vegas, NV, in
7 a given week. Plaintiff has himself traveled across the middle California
8 from Elk Grove CA, to the Reno-Tahoe International Airport a distance over
9 160 miles for Uber and Lyft. That is interstate transportation, and would
10 exempt every driver, the Defendant have done nothing!

15 751. According to U.S. Supreme Court Justice Ruth Bader Ginsberg, and attorney
16 is supposed to investigate the law and the facts before forming a strategy,
17 here the Defendants appear to have ignored the facts and the law, increased
18 their billing time, from 2103 to 2019 in their interest and left Plaintiff (and
19 other drivers) to the wolves of Uber and Lyft. Plaintiff is now out of
20 business and his 30 plus career of his chosen profession as a livery driver.
21 The Defendants refuse to act, where they have the law on their side designed
22 to stop unauthorized and illegal passenger transportation, 49 U.S.C.
23 §§14707, 14704, yet they do nothing!

1 752. It is beyond comprehension and all rational justification why the Defendants
2 have reached a preliminarily approved settlement with Uber as bad as or
3 worse than the one they previously achieved with Lyft, for 27 million and
4 millions in attorney's fees. At least the Lyft settlement put money in their
5 pockets to be able to carry on the Uber case. Alas, they appear to have no
6 real interest in Plaintiff (or the other hundreds of thousands of drivers in
7 California) they claim to represent the best interests of.

10 753. Furthermore, in doing all of the above described acts and omissions
11 constituting Defendants' breach of their fiduciary duties owed to Plaintiff,
12 Plaintiff sustained damages, including but not limited to, extreme delays in
13 the litigation, adverse decisions in the district court and Ninth Circuit Court
14 of Appeals, the failure to raise the federal Statutory right to be exempt from
15 Arbitration caused the loss of the comraderies of the previous class members
16 of the suit, a loss of the true value of his labor and property to Lyft
17 settlement, the loss of his TCP license, loss of his labor and property to Uber
18 and Lyft's continued illegal operations, legal fees and expenses incurred to
19 prosecute his own case, in the least.

22 754. The acts and omissions constituting breach of Defendants' fiduciary duties
23 were committed with oppression, fraud and/or malice within the meaning of
24 Civil Code Section 3294. As a result, Plaintiff, in addition to actual

1 damages, may recover exemplary damages for the sake of example and by
2 way of punishing Defendants.
3

4
5 **WHEREFORE**, Plaintiff prays for judgment against Defendant Attorneys, and
6 each of them, as set forth below;
7

8 **FOR COUNT TWENTY-SEVEN**

- 9
10 1. For actual damages according to proof;
11 2. For interests as allowed by law;
12 3. For the costs of suit incurred herein;
13 4. For such other and further relief as the Court deems just and proper
14

15 **FOR COUNT TWENTY-EIGHT**

- 16
17 1. For actual damages according to proof;
18 2. For interests as allowed by law;
19 3. For the costs of suit incurred herein;
20 4. For such other and further relief as the Court deems just and proper
21
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23
24

25 **PLAINTIFF REQUESTS A TRIAL BY JURY**
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1 **IX. CONCLUSION**

2 **IT'S A SIMPLE PROBLEM:**

3
4 The passenger transportation business, interstate and intrastate, is regulated
5 by Congress.

6
7 Uber and Lyft have violated Federal law since their very inception by
8 selling transportation to private vehicles under 49 U.S.C. 13506(b)(2) which is
9 very clearly spelled out in the supporting federal regulation, 49 CFR§372.101.

10
11 Uber and Lyft violate numerous federal laws, regulations and codes as shown
12 above and yet the regulators have totally ignored the problem.

13
14
15 Uber and Lyft have violated California state law since the beginning.
16 Claiming drivers are independent contractors not employees under California Law
17 (IWC No. 9) and yet they control everything; rates (max pricing), working hours,
18 routes (follow the map no matter the circumstance) and limiting services (meet and
19 greet). They even control which hours I must work and how long to be profitable.

20
21
22 Uber and Lyft violate numerous other laws, regulations and codes and yet the State
23 regulators have unlawfully aided and abetted Uber and Lyft's illegal business.

24
25 Uber and Lyft are continuing to operate in interstate and intrastate commerce,
26 a federally prohibited passenger transportation business.

1 Federal law requires 49 U.S.C. §13506(b)(2) that passenger brokers, like
2 Uber and Lyft, only sell or arrange passenger transportation to authorized State and
3 Federal motor carriers 49 U.S.C. §14501(d) and requires passenger brokers who
4 sell transportation to also register as motor carriers 49 U.S.C. §13904(d) in
5 interstate and intrastate commerce. Uber and Lyft don't.
6
7

8 There is no exemption for Uber and Lyft's passenger transportation sales to
9 private motor vehicles business, 49 U.S.C. §13506(b)(2).
10
11

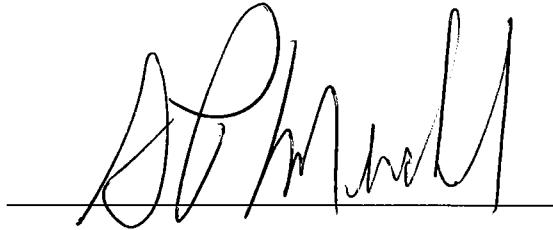
12 I am in front of a federal Court of Law, where I have a federal statutory right
13 to enforce the law, 49 U.S.C. §§14704, 14707. The media reports the continuing
14 murders, rape, and assaults; and drivers, like plaintiff being ripped off of their
15 labor and property, it's a daily occurrence.
16
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18
19 The drivers' strike across the nation and the world, yet we can't stop Uber
20 and Lyft's per se illegal Federal and State operations or the theft of my labor and
21 property or ensure my safety. The Regulators should have long ago and ignored
22 the problem. The court now being aware and informed has a duty, an obligation to
23 remedy the problem and should force Uber and Lyft to comply, not to mention the
24 regulators whose duty, like Plaintiff, is to enforce and abide by the laws of this
25 great nation.
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1
2 Plaintiff requests a Statement of decision.
3
4

5
6 Respectfully submitted;

7 DATED: JUNE 7, 2018
8

A handwritten signature in black ink, appearing to read 'S. Patrick Mendel', is written over a horizontal line.

9
10 S. Patrick Mendel
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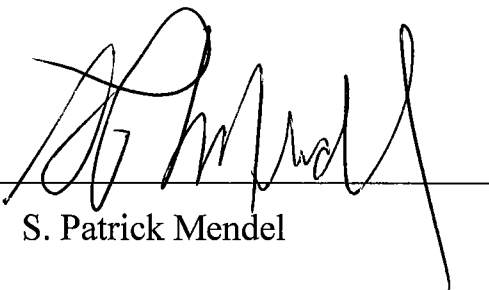
VERIFICATION

I, S. Patrick Mendel, declare:

I am the plaintiff in this action. I have read the foregoing complaint and know its contents. The matters stated in the foregoing complaint are true of my own knowledge, or are stated on my information and belief and I believe them to be true.

Executed on June 7, 2019, in San Leandro, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



S. Patrick Mendel